1945 File No. S. Dwr. 6/45

Legal DEPARTMENT

BRANCH

Subject:— Suits. Dharwar

C.S. No. 297 of 1944.

① The Deccan Industrial and Estates Ltd- Hubli — Plaintiff.

Vs.

① N. C Raghavan, Deputy Engineer, Hubli Electrical supply, P.W.D., Hubli ②

The Hubli Electricity Co. Ltd. Hubli

Defendants

Re The matter of Hubli Electricity Co. Ltd. Hubli.

P.E 49

File No. S. Dwr. 6 45

Std. Sectt. Slip 24-B

CONTENTS

Legal Department File No1 S. Dwr. 6/45

Sr. No.	Compilation No.	Subject	Pages
		Suits Dharwar C.S.No. 247 of 1944 1) The Deccan Industrial and Estates Ltd-Hubli v/s Plff 1) N.C. Raghuvan Deputy Engineer, Hubli, Electric supply, P.W.D. Hubli 2) The Hubli Electricity Co. Ltd. Hubli. /Defendants	
1)	Printed G.R. L.D. No. 870-A 29th Jan. 1945	In the matter of Hubli Electricity Co. Sanctioning the defence of the suit.	21
2)	G.R. L.D 6126 18th August 1945	Sanctioning the defence of the Cr Appeal No. 151 of 1945.	29
3)		Judgment	31
4)	G.R. L.D. 961 27th Jan. 1947	Recording the result of the appeal.	71
5)	G.R. L.D. 3538 12th April 1948	Sanctioning the engagement of Mr. S.R. Mahajan.	103 215

This relates to Hubli C.S. No.297 of 1944. Deft. 2 is Hubli Electricity Company. The facts briefly are that on 3-4-43 Govt. gave notice to deft. 2 under sec.4(2) of the Indian Electricity Act that if its plant was not put in proper working order as indicated in the notice within a period of six months, the license would be revoked. On 28-1-44 a notice was issued under sec.5(a) of the Act that the license would stand revoked from 1-5-44. Thereafte Govt. elected to purchase the undertaking but as the purchase would have taken some time to be completed, it issued an order on 3-5-44 under rule 81(3) of the Defence of India Rules authorising Mr. Raghavan who is defendant No.1 in this suit, to exercise effective control of the undertaking with a view to keep it in efficient working order. Deft. No.1 took over such control duly. Plff. is a private limited company which alleges that it was a lessee in possession from deft. 2 of certain four buildings in the compound of the deft.2 and the owner of the machinery etc. contained in these buildings. It sues for a declaration and injunction against deft. No.1.

2. The plff: company is obviously a dummy or bogus concern set up by deft. 2 with a fraudulent purpose after the first notice of 3-4-43. On facts therefore it will be unable to establish its allegation. It also appears that the suit is misconceived as to parties and reliefs sought, there is no notice of suit under sec.80 C.P.C., there should be a bar under sec.19 of the Defence of India Act, and the alleged lease offends against sec.9(2) of the Electricity Act and also against the conditions on which the land was originally acquired for deft. 2 by Govt.

3. A reference has been made in the report under rule 118 L.O.R. to sec.270 of the Govt. of India Act. But that sec. applies only to acts which took place in connection with the affairs of a Province, before April 1937. The Section will not apply to an act which was done in 1944 as in this case: See Magbool Hussain Vs. Emperor 15 Luck. 740. Hence that plea is not taken here. Sec.271 applies

15 6

to this case and the only protection it affords is that under section 80 of the Civil Procedure Code.

4. Deft. 2 has filed two suits in the High Court to get the revocation and other orders passed by Govt. declared illegal. The present suit by a third party at Hubli is another attempt to defeat the same orders. The High Court suits are pending but the issues therein are different from those arising in this suit.

5. Sanction may be accorded to the defence of the suit on the lines of the appended ~~suit~~ brief Ws 159-168 ante.

Sd
22/1

AAG Para 8 of the Grounds of Defence is perhaps unnecessary. Govt is not a party to the suit as present. Sd 22/1

RLA Para 8 may remain Sd 23/1/45

No. 725 d. 23/1/45

Secy Pwrs

Sl. Br.

Submitted with reference to this O.M. Ws 141-142 P.W.D. to Govt dt 5-1-45.

2. Govt Sl. Sec to Govt may see the brief Ws 159-168 ante

U.O. for remarks if any

Sd 24/1/45

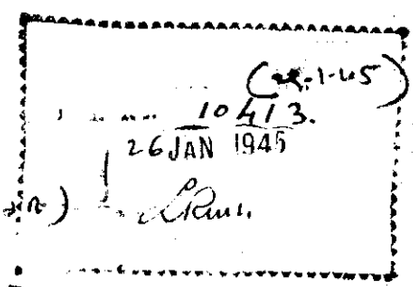
Sd 25.1.45

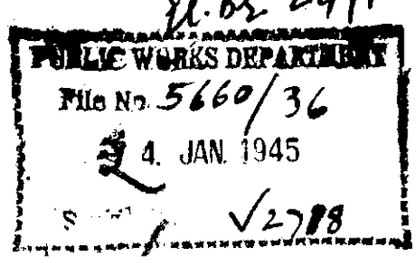
Sd 25/1

Vide U.O. to Sl. Sec to Govt dt 25-1-45.

U.O.:

Sl. Br. 24/1





Report on Civil Suit Long Cause No. 297 of 1944 in the First Class Sub-judge's Court, Hubli as required by Rule 118 of Law Officers Rules and Rules for the conduct of Govt. affairs.

(1) The number of the suit :- Long Cause No. 297 of 1944.

(2) The suit was instituted on 1-11-44 in the Court of the F.C.Sub-judge, Hubli and summons received on 6-11-44.

(3) The parties to the suit are :--

Plff.:- The Deccan Industrials & Estates Ltd., Hubli by its Manager Mr. M.K.Belligatti of Hubli.

V e r s u s.

Defts.(1) Mudumangalam Chakrapani Raghavan, Deputy Engineer, Hubli Electric Supply, C. D., Hubli.

(2) The Hubli Electricity Company Ltd., Hubli.

(4) Claim Rs. 70-0-0.

(5) The date fixed for first hearing and filing written Statement was 28-11-44, and this date has been adjourned to 15-12-44. In the meanwhile on the 15th November, the Plff. sought an interim injunction in the same Court. The hearing of this has also been postponed to the 15th December 1944. Further postponement will be applied for till orders of Government are received as per Rule 75(2) of the Law Officers and Conduct of Government Officers Rules.

(6) No notice of action under Section 80 of the Civil Procedure Code has been received.

II. (a) & (b) The copy of the plaint in English is enclosed herewith typed in half margin with notes and remarks.

(c) (1) Facts of the case :- As a result of Government Order (Copy enclosed) No. 5660/36 dated 3rd May 1944, made under the Defence of India Rule 81 (3), read with Section 5 (d) and (g) of the Indian Electricity Act, 1910,

III The entire control of the Hubli Electricity undertaking together with possession of its premises and property inside and outside the same, came to be vested in my charge

charge as Deputy Engineer appointed for the purpose in the same order At the time I took charge on the 4th May 1944, I was not aware of the existance of any Company or Corporation other then the Hubli Electricity Co. Ltd., carrying on independent business inside the premises of the Hubli Electricity Undertaking. In conversation with the Managing Director of the Hubli Electricity Co,Ltd. previous to the taking over, I was given to understand that the workshop and Foundry activities were those of the Hubli Electricity Company. (N.B. In this connection it is pointed out that their letter No. 1/5 dated 13-10-43 to the Deputy Secretary P.W.D.,Bombay. The Hubli Electricity Co.Ltd have stated that they had put up a special foundry and expanded the machine shop for the purpose of making locally parts for the Engines of the Hubli Electric undertaking(extract of letter enclosed herewith)

4. Later, after taking charge of the premises, and during checking, counting and varifying Plant and Machinery etc. in the compound, I was given to understand that the Deccan Industrials & Estates was an independant Co. working inside the premises, that most of the workshop machinery which all along belonged to and were being used by the Hubli Electricity Co.Ltd. ~~xxxx~~ ~~xx~~ hitherto, had been sold to the Deccan Industrials who had now become the owners, and that some buildings including the part of the Main Power House building in which the workshop (with machineries) had been located and used for years, had also been leased to the Deccan Industrials. As most of the important records pertaining to Agreements etc. which were in the custody of the late management of the Hubli Electricity Co. had already been removed by them, I could only make an attempt to verify facts from the remaining records, registers and vouchers and bills that came in my possession. The facts ascertained so far are as follows .--

(1) Since the start of the Deccan Industrials in July 1943 Rs.50/- per month has been billed and debited in their accounts to the Deccan Industrials on account of rent for the foundry shop etc. by the Hubli Electricity Co.Ltd., but there appears to be no registered lease or agreement, nor any definite description of the premises rented. (Vide copy of ~~bill~~ bill enclosed)

(2) Then on 30th September 1943 in three months after the Deccan Industrials started working, a bill for Rs. 10.121-13-3 (copy [illegible] seen)

(copy enclosed) has been made out and debited by the Hubli Electr city Co.Ltd. for workshop machinery and another bill (copy enclos for Rs.1600/- for small tools etc. has also been debited to the Deccan Industrials to whom all these are supposed to have been sol On the same day i.e. 30th Sept. 1943, a counter bill for Rs.9235/- (copy enclosed) has been billed and debited against the Hubli Elec tricity Co. by the Deccan Industrials. Similarly on 29-2-1944, another bill of Rs. 3110/- (copy enclosed) has been debited by the Deccan Industrials against the Hubli Electricity Co.Ltd. These two bills are for spare parts supposed to have been manufactured and supplied to the Hubli Electricity Co.Ltd. No chalans, receipts of acknowledgement from any responsible staff in support of these bill are forthcoming. No information regarding sale of machinery, wheth any valuation was made, whether the sale was advertised or not etc is known to any of the staff; and no correspondence is said to be in existance except the entries in Ledger and book adjustments of debit for the sale of machinery, tools and stores sold to Deccan Industrials and credits for the spare parts manufactured and suppl ed to the Hubli Electricity Co. Even daily receipts of cash of the Deccan Industrials were entered in the Hubli Electricity Co.'s cash books. It appeared that the whole transactions were an atte attempt to defraud and deprive the sinking Hubli Electricity Co. of what ill could be saved for use in other ventures.

(3) It was also ascertained from enquiries in the Office that the Deccan Industrials Limited though merely registered as a private Company, was a bogus company, having had no separate exist ence except on paper, whose active Directors were merely petty employees of the Hubli Electricity Co.Ltd. (Vide list and details of Directors and Share holders attached), having little or no t l asset. except what Machinery, plant, tools, stores and cash that was transferred and advanced by the Hubli Electricity Co. The so called Co. was started at the instance and active help of Mr.R.L. te the Managing Director of the Hubli Electricity Co. Ltd. after Government had served notice of revocation of the Hubli Electricit Company's licence in April 1943, with a view to obtaining other ventures at the expense of the Hubli Electricity Co. which appears to be slipping from his hands as a result of Government's notice, as also with a view to making the most profit from the misfortunes

misfortunes of the Hubli Electricity Co., for which Mr. Amte himself was directly responsible, and also with a view to putting as much hardicap and hindrance as possible on the prospective purchasers, by depriving of the use of the Machine tools, should Government revoked the license and ordered compulsary sale of the undertaking either to itself or to a third party. This was a master stroke to counteract Government's threat of Revocation. There was no need of an outside Co. to manufacture and supply the repair and renewal parts for the Engines, particularly as no supervisory or Engineering staff was employed for the purpose. Mr. Amte, in himself constituted the Engineer and Managing Agent, as he felt himself competent for the job. he started this Deccan Industrials concern as a means by which to sell his technical services (for which he is also paid Rs.500/- per month by the Hubli Electricity Co.) Many of the parts said have been supplied are not traceable and at least one part - a cylinder head was never even completed and is absolutely useless. Mr. Amte, the Managing Director had also helped this concern to fly off the orbit against them in many ways by cash/ unauthorised sale to them of controlled materials like cement, coke and pig iron, non-ferrous metals etc, not under the priority certificate by the Hubli Electricity Co. Orders for repair parts and the hire and running of the flour mills.

4. It was also ascertained from the Municipality that the lands comprising the Hubli Electricity Co.'s premises were acquired from the Hubli Municipality Borough by Government for a public purpose in the Hubli Electric undertaking.

In view of the above facts and findings, and also of the fact that I was charged by Government order No. 5660/36 dated 6-6-44 with the responsiblity of exercising efficient control so as to keep the undertaking in efficient working order consistent with provisions of the Indian Electricity Act, and it was found that the presence and activities of the Deccan Industrials inside the Hubli Electricity Co.'s premises was detrimental to the working of the electric supply and was causing interference and obstruction, and also that the plant and workshop machinery which were hitherto in daily use were absolutely necessary for the efficient working of the Electric Supply, I decided to prohibit them from entering the premises and to deal with only the Hubli Electricity Co. and to retain what was their property and required for the Electric Supply under the direction of the Electrical Engineer to Govt. (vide govt.

I wrote a letter No. 9,dated 20-5-44 to the Deccan Industrials pr
xting them from entering and working inside the Hubli Electricity
Co.'s premises. I also wrote to them in the same letter under the
same direction informing them that all materials not belonging to the
Hubli Electricity Co. or required for the undertaking will be allowed
to be removed by them. The workshop machinery, materials and tools
of the Hubli Electricity Co. have been retained by me and have been
listed and included in the valuation statement of the Hubli Electri-
city Co. for payment to them when the sale of the Hubli Electric Und
undertaking is completed. The Deccan Industrials have since taken
advantage of my offer and even removed some of the machinery,the ow
ership of which is not under dispute. The Plff. should proceed again
Deft. No.2 for the recovery of the value of the cost of the machiner
taken over by Government..The Deccan Industrials have through their
solicitors served a notice on Government (copy enclosed) and have
now instituted the present suit against me, personally, (i.e. not eve
in my official capacity as agent of Government), but from the prayer
in the plaint, it will be evident that the suit is really directed
against Government as the principals whose interests only are threa
ened.

The prayers are for a declaration (1) that the Plff. is entit
led to entry into and the use of the four buildings inside the Powe
housecompound and that I, be restrained from interfering and obstru
-ting the Plff. (2) that the Plff. is the owner of all the machi
nery,tools,appliances and other articles kept in the said four buil
ings(copy of schedule A to the plaint about the property claimed i
herewith enclosed) (3) that I be restrained from making wrongful
use of any of the properties above referred to. The costs estimated
at Rs. 70/- is also claimed. The claim to proceed later for conse-
quential damages is also reserved.

C (ii) <u>The course to be adopted</u> :-

It is proposed to defend the suit for the following reasons :-

(1) To allow the Deccan Industrials to enter and carry on their
business of Iron founders, machanists and manufacturers of Industri
al machinery etc. inside the power station compound will adversely
affect the working of the Hubli Electric Supply.

2. Besides, the Plff. have been carrying on the working of I smelting with a 6 ton crucible, and also arc welding which are sources of danger to the large storage of crude petroleum in the near vicinity.

3. The workshop machinery and tools are absolutely necessary for the proper maintainance of the lower house as also the use of the said buildings and premises and hence, they must be retained also.

9 (iii) The Grounds :-

The grounds on which it is proposed to base the defence are as follows .--

(1) The premises of the Publi Electricity Co. were acquired by Government from the Municipality for a public purpose and cannot be used for any but a public purpose ; which a concern like the Deccan Industrials running for private profit cannot by claim to vide C.L.J. 244 (extract enclosed). Hence this claim to carry on private business inside the power house premises of the Hubli Electricity Co. can be resisted successfully.

(2) There are no registered documents to prove that the workshop and other buildings were leased to the Plff. except book adjustments ~~entries~~ which have been recently entered probably to establish a claim later. They were no regular tenants at all.

(3) Under Section 21(a) of the Indian Electricity Act, 1910, a Licensee like the Hubli Electricity Co. has no right or authority either to sell or lease any part of the undertaking i.e. plant, machinery, buildings etc. to any person or body without Government sanction, and agreement or transaction to that effect shall be void. as Govt. have given no such consent, both the fictitious sale of plant and machinery and lease of the buildings are void.

(d) Nil.

(e) All correspondence etc are enclosed.

(f) List of documents with ~~explanatory~~ descriptive statement is also enclosed.

Deputy Engineer.

Sd. [illegible] Sambrani.
Clerk of the Court.
Presented on 1-11-44.

Long Cause Suit No. 297 of 19[illegible]

In the Court of the P.C.Sub-Judge at Hu[illegible]

Plff:- The Deccan Industrials & Estates Lt[illegible] Hubli, by its Manager, M.K.Belli[illegible] of Hubli.

V E R S U S.

Defts :- 1. Nidamangulam Chakrapani Ra[illegible] Caste Brahmin, age 56, Occ[illegible] Government Service, Tabib La[illegible] Hubli.

2. The Hubli Electricity Co., [illegible] Hubli.

Claim Rs. 70/-

The Plff. has to state as follo[illegible]

1. The Plff. is a corporation reg[illegible] in June 1943 under the Indian Comp[illegible] with its registered office at Hubli[illegible] Belligatti is the Manager of that [illegible] with full powers to act for the Co[illegible] including the power to file this su[illegible]

(2) The Company has been carrying [illegible] business of Iron and Brass Founder[illegible] and repairers, Mechanists and manuf[illegible] of Industrial machinery. Their [illegible] as Shidharudha Engineering Works, in portionsof four buildings [illegible] pound of the Deft. No. 2. These are rented from them. The Plff. [illegible] staff, in May 1944 several empl[illegible] all doing work in the said f[illegible] four buildings are shown in [illegible] as Schedule A. It may be [illegible] plaint.

(3) On or about 20th May 19[illegible] gave a notice to the Plff., [illegible] the 22nd May 1944, none of [illegible]

1. This is a bogus concern. Most of the Directors were low-paid employees of the Hubli Electricity Co.,Ltd., Mr.M.K.Belligatti, the Manager who was a Store-keeper is only a nominal signatory to the suit but the real party behind the suit is Mr.Ante, the Managing Director of the Hubli Electricity Co., who was the moving spirit conducting the activities of the Deccan Industrials & Estates.

2. Actually the Hubli Electricity Co.Ltd., whose employees, the Active Directors and the Managing Director were, were carrying on some such business, in a small way, in the name of the Deccan Industrials & Estates Ltd.

3. This was done as their activities were obstructing the work of the Electric Supply.

Please see 21 C (iii)
of Report

the above said concern would be obliged to work or stay within the power house compound or buildings therein. As the Plff. had taken the premises on rent, its employees had every right to go and work in the said buildings. The Deft.No. 1 had no right to obstruct them.

4. The police were there only for emergency in case tgempt at forcible entry or possession.

1. The employees of the Plff., however did their work as usual on the 22nd May 1944. But on the morning of the 23rd day 1944 all the said employees were prevented from entering, by posting the Police [redacted] other servants of Deft. No.1 at his [redacted] The Deft. No. 1 continues to cause this obstruction to this day. Hence this suit for restraing the Deft. No. 1 from ceasing the obstruction to the Plff. in carrying on their legitimate work at their sadd factory

5. Most of these were listed and entered in the valuation statements of the Hubli Electricity Co.Ltd., in whose possession and premises these were. [redacted] Rest of the [redacted] allowed to be removed.

5. In the said four buildings were kept several machinery, tools, appliances etc. including among others Centre-lathes, Drilling machines, Lister-Engine (5 B.H.P.) electric welding machine, gas welding [redacted] electrodes, welding-rods, calcium carbide, shiftings pulleys, etc. All these belong to the Plff. Neither Deft.No. 1 nor Deft.No. 2 has any right or title to them. The Plff. seeks to get a declaration of his title to all these articles.

The ownership of Deft.No. passed on to Government [illegible] elected to purchase undertaking, and informed Deft. No. 2 of it under Electricity Act, Sec.5 (5), vide Government Order No. 5660/36 dated [illegible] The powers are not misused as suggested. The Government order requires the Engineer to keep the undertaking in efficient working-order consistent with the

6. Deft. No. 2 is the owner of the four buildings and has given them to the Plff. on rent. Deft. No. 2 is also the owner of the Electric Undertaking which supplies electric energy at Hubli. Deft. No. 1 claims to be an authorised controller appointed under the Defence of India Rules 81(3) to control

vide Sec.5 cl. (d) and (g) under which Government is empowered to work the undertaking itself. No claim to the properties genuinely found to belong to the third party having been made. Only when ownership is doubtful or disputed, the third party has to establish it in a court of law. I deny any wrongful acts were commited by me wilfully or otherwise. It is the Plff. who has set up false claims. Government or myself can be no party to the suit as they were no parties to the sale or lease of the property. Deft.No.2 is rightly impleaded as the party to the suit.

His powers as controller are limited only to issue directions to the persons having functions of management of the said undertaking. But it does not empower him to take possession of properties of the undertaking. At any rate he has no right to lay any claim to the properties in the hands of the third parties like the Plff. much less to obstruct them in the legitimate enjoyment of their properties. The said wrongful acts of Deft. No. 1 are committed in his personal capacity. They are incapable of being committed as a controller. The Deft. No. 1 further has been setting up false right or title of Deft. No. 2 to the machinery and other articles which really belong to the Plff., and which are lying in the above said buildings. Deft. No. 2 is therefore impleaded as a formal party.

7. The cause of action arose on 23rd May 1944 when the obstruction was first caused and it continues from day to day.

8. This Deft. is not responsible for the alleged loss or damage as he (Plff.) was informed that property which did not belong to the Hubli Electricity Co., which was not used for the undertaking could be removed out of the premises.

8. The above said illegal and wrongful acts of the Deft. No. 1 have caused and have been causing considerable loss and damage to the Plff., in respect of which the Plff. intends to file a separate suit for which right is hereby reserved.

9. This suit is not maintainable in this or any Court either against this Deft.No.1 or Crown under Sec.17 of the Defence of India Act, 1939. In any case the suit is misconceived so far as concerns Deft.No.1, who is only an Agent of Govt. who are the real parties and whose interests only are affected in this case.

9. The cause of action has arisen at Hubli and Plff. and Deft. No. 2 have their registered office at Hubli. Deft. No. 1 also resides at Hubli. Hence this Court has jurisdiction to try this suit.

10. For purpose of Court fees this suit is valued at Rs. 65/- in respect of the prayer for injunction as a consequent of declaratie in clauses (b) and (c) of para 11. The praye

116
128

is valued at Rs.5/-. A Court fee of Rs.2/- is paid for both reliefs. For Court's jurisdiction it is the same.

The prayers are :-

(a) That the Deft. No.1 be restrained from interfering with or obstructing the Plff. in the possession and enjoyment of the said four buildings situate within the compound of the power house at Hubli.

(b) That a declaration be given that the Plff. is the owner of all the machinery, tools, appliances and other articles kept in the said four buildings.

(c) That the Deft. No.1 restrained from making wrongful use of any of the properties above referred to.

(d) That Plff.'s costs be awarded.

Dated 1st November 1944.

For the Deccan Industrials & Estates Ltd

Sd. M.K.Belligatti.

M A N A G E R.

I, Manappa Karappa Belligatti of Hubli, Hindu by inhabitant, residing at Old-Hubli, the Manager of the Plff. Company abovenamed, do hereby solemnly affirm that what is stated above in para 1 to 9 above is true to the best of my knowledge and belief.

Hubli, dated 1-11-44.

Sd. M.K.Belligatti

Drafted and presented by

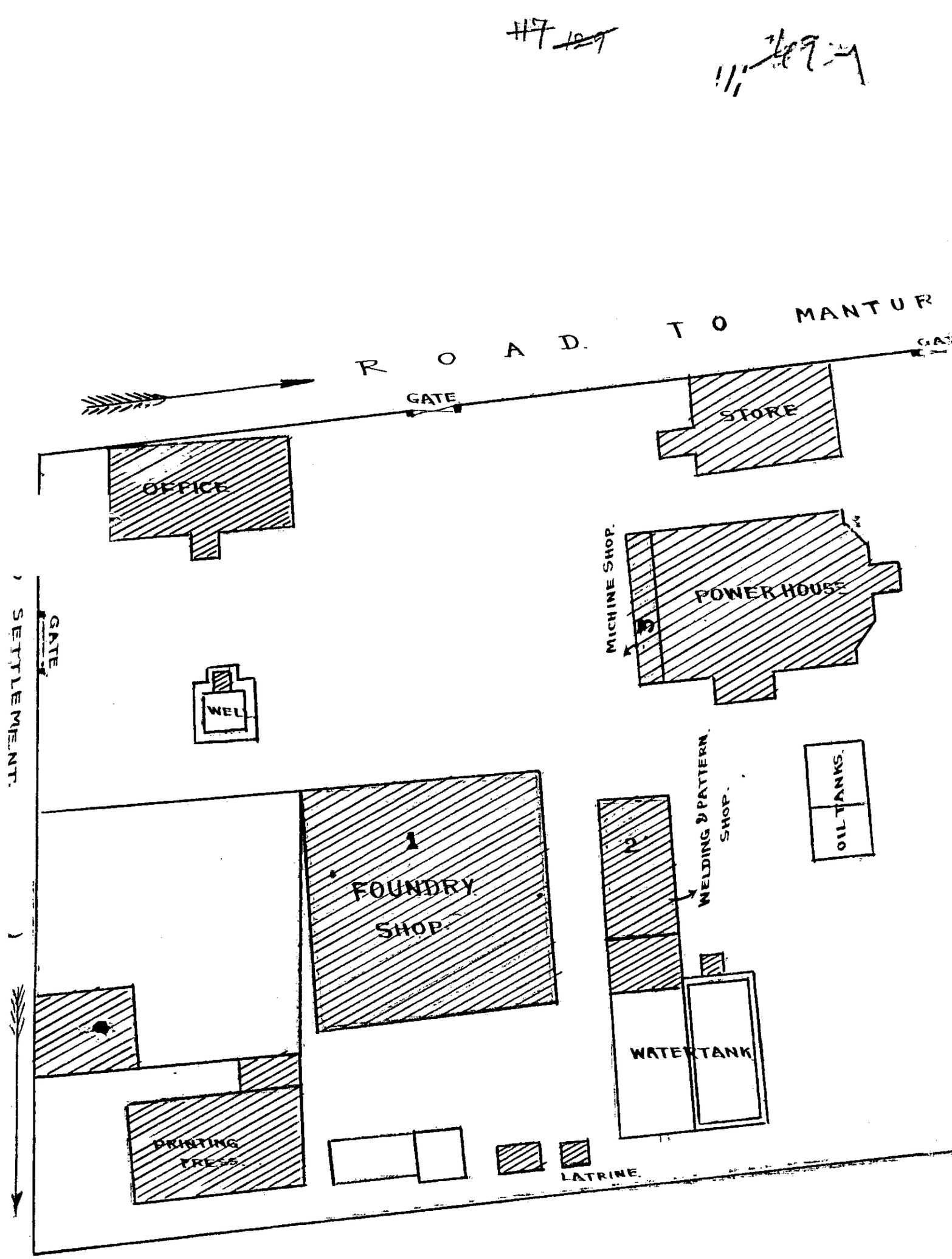
Sd. S.S.Malimath.

Advocate.

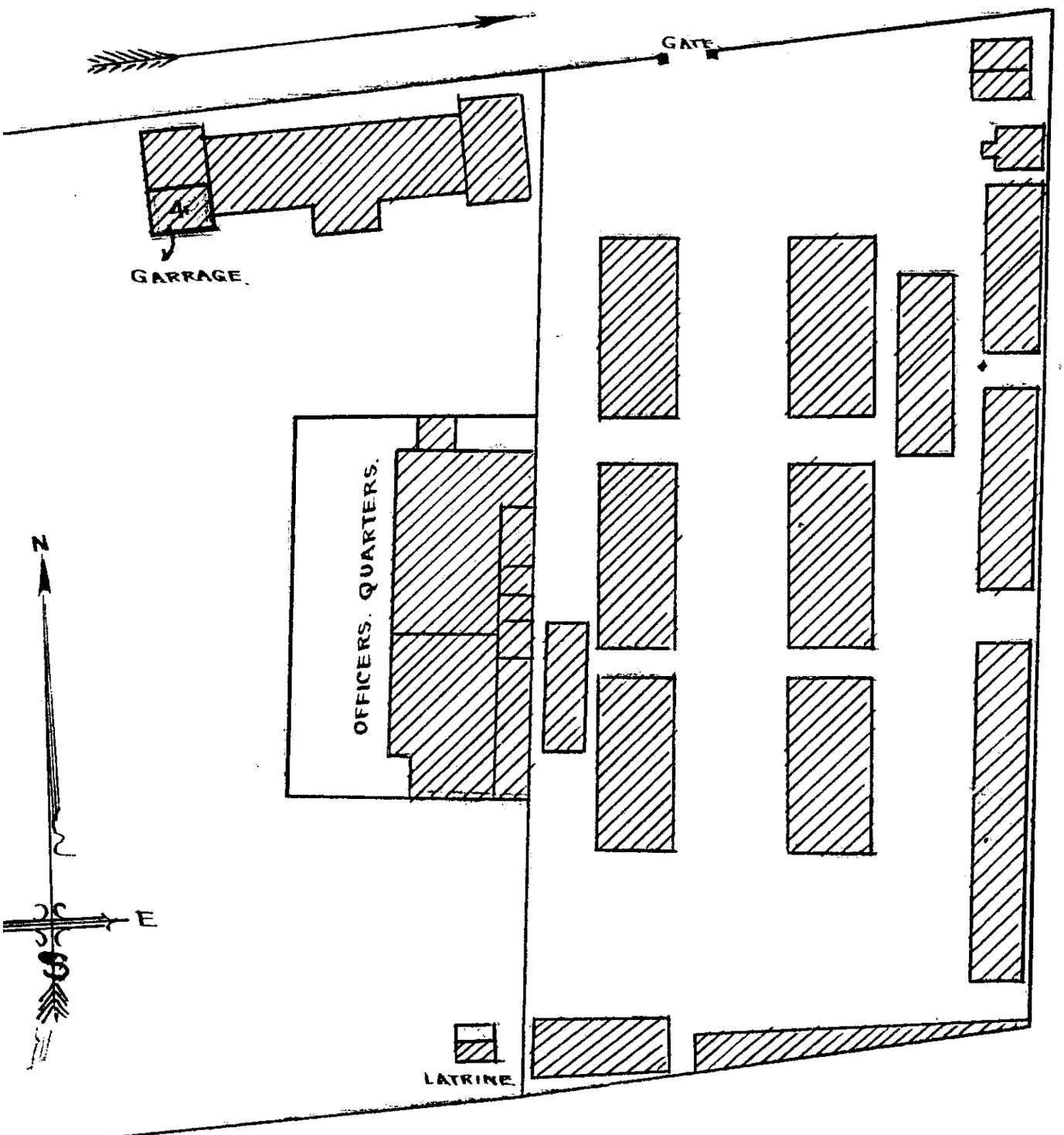
Examined and particulars ordered to be entered in the Register of Suits.

2-11-44. Sd. M.M.Sambrani.

Clerk of the Court


ROAD TO MANTUR
GATE
STORE
OFFICE
MICHINE SHOP.
POWER HOUSE
GATE
WELL
SETTLEMENT.
1
FOUNDRY
SHOP.
2
WELDING & PATTERN
SHOP.
OIL TANKS.
WATER TANK
PRINTING
PRESS.
LATRINE.

SCHEDULE. A.



The portions of the four buildings rented by the Plff. are shaded in red and are shown as below :-

1. Foundry shop.
2. Welding & Pattern Shop.
3. Machine Shop
4. Garage. (building)

Ex. 16.

Long Cause Suit No. 297 of 1944.

In the Court of the J.M.Sub-Judge at Hubli.

Plff.:- The Deccan Industrials & Estates Ltd., Hubli.

Defts..(1) Thangalam Chakrapani Raghavan, Deputy Engineer The Hubli Electric Supply, Hubli

(2) The Hubli Electricity Co.Ltd., Hubli.

The deft. No. 1 begs to apply as under :-

(1) That today deft.No. 1 had to file his objections to Exs.5 & 6.

(2) The papers have been forwarded to by this deft. No. 1 to the Government for the framing up of objections necessary through the D.L.R.

(3) That after the papers were sent, the Govt. asked deft.No. 1 for certain explanations in the report which has also been sent. The objections from Govt. have not been received as yet, hence this deft.No.1 prays for further one month's time to put the necessary objections.

(4) That in the meanwhile this deft.No. 1 urges that this suit is entirely untenable against this deft. according to the Government of India Act of 1935, section 270 which requires that no suit can be filed against this deft. for any act done or purporting to be done by him in the execution of his duty as a servant of the Crown under the Bombay Provincial Government without previous sanction by the said Government. This suit is not tenable under the Defence of India Rules Act.

(5) Further that according to the sketch produced by the Plff. under the rule, only parts of the buildings are said to have been attached to them. So far as this deft.No. 1 is able to trace there is no machinery as such in existence.

(6) That according to the Plff.'s claim, all the machinery such as engines, lathes, planning machinery, drilling machinery etc. which are fixed in the main Power house building and which are absolutely essential for the running of the works, are claimed by the Plff. as his, whereas they really belong to to the Hubli Electricity Company. If the Plff. is allowed to take charge of these machineries the Power house shall have to be automatically stopped.

(7) The transfer of the machinery to the Plff. will effectively become effected without any proper authorisation, hence if the

The Government gave notice to the Hubli Electricity Co. for revoking the license.

(8) The transfer as such is illegal and bogus and has been done intentionally by the Managing Agent simply with the intention of defrauding the Hubli Electricity Co. and also to put obstacles in the way of the Government in revoking his License.

(9) That it is dangerous to the Hubli Electric Supply to allow the foundry to be worked within the premises of the Company where large storage of crude petroleum is stored in the near vicinity as in the foundry, melting has to be done on a large scale and there is the danger of the coal fire setting fire to the same.

(10) That the Def. No. 1 has put in these few preliminary objections, the proper objections shall have to be filed by the Def. No. 1 after receiving full instructions from the Government Legal Advisers. Hence the Def. No. 1 prays that one month's further time may please be granted to put in further objections.

Hubli.
Dated 15-12-1914.

Sd. N.J.Raghavan.
Deputy Engineer,
The Hubli Electric Supply Co.Ltd.

Sd. T.A.Veeranadi.
Pleader.

ORDER.

Pleaders agree that preliminary Issues arising from objections already pleaded above may be framed and decided at the outset, as the suit is said to be not tenable at all. Hence on the pleas relating to preliminary Issues will be framed and time given after findings on these issues are given, if it becomes necessary for Deft.No. 1 ~~for Deft.No.1~~ to put in. Costs on applicant.

15-12-1914.

Sd. R.H.Kulkarni.
Sub-judge, Hubli.

137 125 Ex. 137
L.C.S?No. 297 of 1944.
15 Dec

Preliminary Issues.

(1) Whether the suit was competent against Deft. No.1 without obtaining sanction under the Govt. of India Act ?.

(2) Whether the suit was competent without giving a notice before suit to Deft. No. 1 ?

What order ?.

Sd. R.K.Kulkarni.
15-12-1944. Sub-judge.

R.I.No. 1248 A 9.2.45.

Submitted.

These papers relating to Hubli Suit No. 297 of 1944 have been referred to L.D. for its remarks on para. 7 of the P.W.D. note dated the 5th Jan. 1945.

It appears that notice of an injuction Order in connection with the suit was received by Mr.Raghavan on 14th Nov. 1944, and as services of the Local Govt. Pleader were not available, as he was out of station, Mr. Raghavan engaged another Pleader, by name Mr. Billimoria to appear for him and to apply for an adjournment. Mr. Raghavan had to pay Rs.15 as the pleader's fee and Rs.1-4-0 towards stamp duty in this connection. P.W.D. proposes in para. 7 of its note dated 5-1-45 to reimburse Mr. Raghavan in respect of this amount of Rs.16-4-0 spent from his pocket.

Govt. has now undertaken to defend the suit on behalf of Mr.Raghavan. It is fit, therefore, that Mr. Raghavan should be reimbursed in respect of expenses incurred by him in connection with the suit. If approved the P.W.D. may be informed that R.L.A. has no objection to the reimbursement proposed by P.W.D. and that that department may issue the necessary orders as provided in Rule 189 of the Law Officers Rules (vide sub-rule (1)(b) and (7) of Rule 189).

14. 7-69

Office of the R.L.A.

The Public Workers Department, is informed that Remembrancer of Legal Affairs has no objection to the reimbursement proposed by that Department. The Public Workers Department may issue the necessary orders as provided in Rule 189 of the Law Officers' Rules (vide sub-rules (1)(b) and (7) of Rule 189).

Sd

O/C For Remembrancer of Legal Affairs.

U.R. to P.W.D. No. 1993, dated 13th March 1945

Issued 13/3.

Sd. for signature

13/3

AS. Sd 13/3

Suits :t
Dharwar (Hubli).
In the matter of Hubli Electricity Co

GOVERNMENT OF BOMBAY.

LEGAL DEPARTMENT.

Resolution No. 870-A.

Bombay Castle, 29th January 1945.

Letter from the Electrical Engineer to Government of Bombay, No. LRM. 11/3824, dated the 18th December 1944—Forwarding papers in the suit noted in the margin; and requesting sanction to its defence.

IN THE COURT OF THE FIRST CLASS SUB-JUDGE AT HUBLI.

Civil Suit No. 297 of 1944.

The Deccan Industrials and Estates Ltd., Hubli ... Plaintiff;

versus

(1) N. C. Raghavan, Deputy Engineer, Hubli Electrical Supply, P. W. D., Hubli; (2) The Hubli Electricity Co. Ltd., Hubli ... ... Defendants.

RESOLUTION.—Sanction is accorded to the defence of the suit on the lines of the accompanying brief.

By order of the Governor of Bombay

P. N. MOOS,
Secretary to Government.

[*P.T.O.*

Issued

MO-III Leg H 1—1

*The Public Works Department,
*The Electrical Engineer to Government, Bombay,
*Mr. N. C. Raghavan, Deputy Engineer, Hubli Electric Supply, P. W. D., Hubli,
The District Government Pleader, Dharwar (with two copies of the brief).

*With a copy of the brief.

No. of 1945.

Copy forwarded for information and guidance to

Chronological Statement of Facts.

The plaintiff sues for—

(*a*) an injunction restraining defendant No. 1 from interfering with or obstructing the plaintiff in the possession and enjoyment of the four buildings specified in the plaint situate within the compound of the Power house at Hubli;

(*b*) a declaration that plaintiff is the owner of all the machinery, tools, appliances and other articles kept in the said four buildings;

(*c*) an injunction restraining the defendant No. 1 from making wrongful use of any of the properties above referred to.

2. The defendant No. 2 Company is holder of an electric license granted in 1924 by the Provincial Government under the provisions of the Indian Electricity Act, 1910. The land belonging to the defendant No. 2 was acquired for it by Government under Part VII of the Land Acquisition Act, 1894 "for the erection of the Power House, Office and other Industrial factories together with residential quarters for its employees and assistants or managers", Government having been satisfied that the acquisition was "needed for the furtherance of the said object and is likely to prove useful to the public". On 24th June 1925, defendant No. 2 duly executed an agreement with Government as required by section 41 of the Land Acquisition Act, and the same was published under section 42 of the Act.

3. On 3rd April 1943, Government issued a notice to defendant No. 2 stating that Government was satisfied that there were sufficient grounds for revoking the license under section 4 (*1*) of the Electricity Act but that it was pleased to permit it to remain in force under section 4 (*2*) subject to the conditions, briefly, (1) that within 6 months the Company put its plant in proper working order and (2) that proper arrangements for the maintenance of the plant were made immediately. The notice stated that if the conditions were not fulfilled the license would be revoked.

4. It is alleged in the plaint that the plaintiff company was formed in June 1943 and that it rented the aforesaid four buildings from defendant No. 2.

5. Between 13th October 1943 and 28th January 1944, the defendant No. 2 by correspondence and by interviews attempted to explain the defects pointed out by Government. On 28th January 1944, Government issued a notice to defendant No. 2 under section 5 (*a*) of the Electricity Act stating that the conditions laid down in the notice of 3rd April 1943 had not been fulfilled and that the license would stand revoked with effect from 1st May 1944.

6. On or about 1st March 1944, Government published notices in certain newspapers inviting applications from intending purchasers for the purchase of the Electric undertaking.

7. On or about 13th March 1944, plaintiff gave notice of suit to Government for a declaration that the revocation of license was void and inoperative.

8. On 30th March 1944, Government issued an Order under rule 81(2) of the Defence of India Rules calling upon defendant No. 2 to comply with the directions issued by the Electrical Engineer to Government before 1st May 1944. An order of 4th April 1944 appointed defendant No. 1 as officer in charge.

9. On 29th April 1944, Government intimated defendant No. 2 that under caluse (*d*) read with clause (*g*) of section 5 of the Electricity Act it had elected to purchase the undertaking and that defendant No. 2 was required to sell the undertaking to Government and to hand over possession to defendant No. 1 on 1st May 1944.

10. Defendant No. 2 having refused to comply with the above, Government issued an Order on 3rd May 1944 under sub-rule (3) of Rule 81 of the Defence of India Rules (*a*) authorising defendant No. 1 to exercise effective control so as to keep the undertaking in efficient working order and (*b*) prohibiting defendant No. 2 from interfering with defendant No. 1 in the discharge of his functions.

11. On 20th May 1944, defendant No. 1 gave notice to plaintiff that none of the latter's staff would be allowed to work or stay within the premises, but that any material or machinery not belonging to the undertaking would be permitted to be removed on application.

12. On 6th June 1944, plaintiff through its Solicitors called upon the Province of Bombay to withdraw the said notice of 20th May 1944 to return plaintiff's goods and also to pay damages.

13. On 7th July 1944, plaintiff applied for permission to remove certain articles. On 26th July 1944, defendant No. 1 asked plaintiff to make the application through defendant No. 2. The application was made accordingly by plaintiff same day, defendant No. 2 endorsing its consent. On 27th July 1944, defendant No. 1 allowed the application except as to one item which belonged to the undertaking. On 4th August 1944, plaintiff applied again, defendant No. 2 endorsing its approval, for removal of other items. On 1st September 1944, defendant No. 1 as before permitted removal of some of the items. p. 53. p. 55. p. 57. p. 61. pp. 67, 71. p. 73.

14. On 17th October 1944, plaintiff informed defendant No. 1 that it intended to commence working "at our rented foundry shop" from the next day. Defendant No. 1 refused the plaintiff's request the same day. p. 75.

15. The present suit was instituted on 1st November 1944.

Grounds of Defence.

Parties and frame of suit.—In regard to parties it would be noticed (1) that Government is not made a party and (2) that Mr. Raghavan is being sued in his personal capacity and not as a public officer. It is therefore clear that any decree granting the declaration and injunction sought in the suit will not be binding on Government or any person except Mr. Raghavan. It will not be binding, for instance, on any successor of Mr. Raghavan, and therefore it would be possible for Government, in law, to render the decree of the Court nugatory by appointing some one else in place of Mr. Raghavan. It has always been held that a Court should not exercise its discretion in favour of the plaintiff under section 42 of the Specific Relief Act if the decree which it might be prepared to grant is likely to prove futile and useless [*see* Maharaj Narain *v.* Shashi Shekhareshwar, 37 All. 313; Raja Bahadur Bishwanath *v.* Mujtaba Husein (1941) 16 Luck. 742; and Muhammad Ismail *v.* The Patna City Municipality (1942) 21 Pat. 449]. Under section 52 of the Specific Relief Act an injunction is also granted at the discretion of the Court, and whereas in this case as above the injunction might not be productive of any benefit to the party obtaining it, it should not be granted by the Court. Therefore the suit as framed ought to fail. The proper procedure for the plaintiff would have been to implead Government as well as Mr. Raghavan. The only explanation given by plaintiff for not impleading Government is as follows:—"The said wrongful acts of defendant No. 1 are committed in his personal capacity. They are incapable of being committed as a Controller." This merely refers to the general principle that Government is not liable in damages for the tortious acts of its servants. This is not however a suit for damages. The only reliefs sought are declaration and injunction. Plaintiff asserts a continuing wrong. Therefore for an effective decree Government was a necessary party.

2. In regard to the injunction plaintiff seeks to restrain defendant No. 1 from interfering with or obstructing its possession of 4 specified buildings in the compound of the power house of which it is tenant from defendant No. 2. There is an implication in this prayer that plaintiff was in possession and enjoyment of the said buildings at the date of suit. As a matter of fact, whatever may have been the position before 22nd May 1944, after that date plaintiff's own applications would show that its employees were prevented by defendant No. 1 or the police from entering the compound of the power house and that defendant No. 1 was making use of the machinery and other articles in the aforesaid four buildings (*see* paragraphs 2 and 4 of the application to Court dated 11th November 1944 and the notice dated 6th June 1944). If p. 37. p. 1.

therefore plaintiff was in possession till 22nd May 1944, it must be held to have been dispossessed from that date. In these circumstances a suit for mere injunction would not lie. Present possession is necessary for the issue of an injunction. Section 54 of the Specific Relief Act only protects lawful possession from invasion by a trespasser: *see* illustration (*o*) to the section. Plaintiff has not sued for the substantive relief of possession and this suit ought to fail.

3. *Notice.*—Section 80 of the Civil Procedure Code provides that no suit shall be instituted against a public officer in respect of any act purporting to be done by such public officer in his official capacity until the expiration of two months next after a notice in writing. Admittedly no notice was given to defendant No. 1. Government's order of 3rd May 1944 issued under rule 81 (3) of the Defence of India Rules authorized defendant No. 1 to exercise effective control of the electrical undertaking for the purpose of keeping it in efficient working order. Control of the undertaking necessarily meant control over all the buildings and materials connected therewith. It is therefore not correct to say that defendant No. 1's powers were limited to issuing directions to persons in management of the undertaking (paragraph 6 of plaint). Defendant No. 1 was entitled by virtue of the order of 3rd May 1944 to have effective possession and control over the said buildings and materials and for that purpose to keep away all strangers therefrom. Plaintiff further contends that defendant No. 1 had no authority to appropriate the buildings of its tenancy or the materials of its ownership. The falseness of the claim about the said tenancy and ownership respectively will be considered presently. For the present it is enough to say that even if the claim were true there was no evidence before defendant No. 1, there is none even now before the Court, to show that plaintiff had any independent right on the premises belonging to defendant No. 2. It should then be perfectly clear that defendant No. 1 was acting purely in the execution of his duty. The expression "act purporting to be done in the execution of duty" has been considered recently by the Federal Court in Maharani of Nabha *v.* The Province of Madras (1944) 7 F. L. J. 115. It was therein held that the question was substantially one of fact to be determined with reference to the nature of the act complained of and the attendant circumstances. The benefit of the statute, it was further held "can be claimed even by an officer who has acted under a mistaken view as to his duty, whether the mistake be one of act or one of law, if only he honestly believed that he was acting in the discharge of his duty". The benefit of section 80 may be denied to an officer who acts maliciously or only in "pretended" execution of his duty, but not only is no malice alleged against defendant No. 1, but in the circumstances of this case there can be no denying the fact that defendant No. 1 was acting solely in the discharge of this duties. Therefore in the absence of a notice under section 80 the suit fails.

4. *Bar of suit.*—Under similar circumstances there is a bar of suit under section 17 of the Defence of India Act which provides that "No suit.....shall be against any person for anything which is in good faith done or intended to be done in pursuance of this Act or any rules made thereunder". Once again it must be observed that excepting vague allegations of its own tenancy or ownership plaintiff has nothing to say about defendant No. 1's good faith.

5. *Merits.*—It does not appear from the record that plaintiff has produced any documents with the plaint. Plaintiff sues for a declaration and injunction on the basis of certain rights of tenancy or ownership. Under Order VII, rule 14, therefore it was necessary for the plaintiff to produce with the plaint the documents which are the *prima facie* evidence of those rights. The District Government Pleader should therefore immediately apply to the Court and call upon the plaintiff either to produce the documents or to furnish a list in accordance with the provisions of Order VII, rule 14. Please also see Order XI of the Civil Procedure Code. Indeed the claim made by the plaintiff is of such a kind that no stranger like defendant No. 1 is likely to be aware of the documents on which it is based. A production of these documents at a late stage will only take defendant No. 1 by surprise. If defendant No. 1 is to know what case he has to meet, he

must know beforehand the nature of the evidence on which plaintiff would rely. Some of the documents which should thus be asked to be produced would be as follows :—

The memorandum and articles of association ; the lease ; any deed showing purchase of the machinery or equipment ; and account books. With regard to the last it may be observed that plaintiff was bound to keep proper books of account under section 130 of the Indian Companies Act.

6. The plaint contains no details of the alleged lease of the four buildings. It may be observed that a lease is an interest in immoveable property, and in certain cases can be proved by a registered instrument only : Section 17 of the Registration Act. In the application to be made to the Court as suggested above plaintiff may be asked to give details of the lease agreement, if there is no registered instrument. In the notice of 6th June 1944 it is stated that plaintiff was to pay a monthly rent of "about" Rs. 150. The account books would show whether and what rent has been paid. In any case it should be contended that the monthly tenancy, assuming there was one, has long since expired and plaintiff has no existing interest so as to be able to maintain the suit. The facts probably will not amount to more than this that the plaintiff company was engaged by defendant No. 2 to do repairing and other work on the latter's own premises. If so, plaintiff cannot be held a lessee, but only a licensee : *see* section 52 of the Indian Easements Act. Government or defendant No. 1 is not bound by a license granted by defendant No. 2. In any case defendant No. 2's interest has ceased, and the license must be deemed revoked : *see* sections 59 and 62 of the Easements Act. For all these reasons the plaintiff company, even assuming that it were a genuine concern, would not be able to maintain a suit.

7. On the facts the main defence will be that plaintiff is a dummy concern, brought into being for the fraudulent purposes of defendant No. 2, shortly after the notice of 3rd April 1943. Defendant No. 2 itself appears to be a shareholder of the plaintiff company, and plaintiff's directors and some of the other shareholders are all petty employees of defendant No. 2. It should be verified whether plaintiff had any employees other than those of defendant No. 2 itself. As regards the foundry and the machine shop, defendant No. 2's letter dated 13th October 1943 addressed to Government states that they were put up or extended by defendant No. 2, and that seems to contradict plaintiff's present allegations. Lastly, it appears from the report that even transactions done in the name of the plaintiff were entered in the books of defendant No. 2. From all these circumstances it should be contended that the entries in accounts in respect of rent or sale-price of materials are bogus entries and that they do not confer any rights on the plaintiff.

8. Another point against the plaintiff is that the land on which all the buildings stand was acquired by the Government for defendant No. 2 for specified purposes as provided for in Part VII of the Land Acquisition Act. The purposes were "for the erection of power house, office and other industrial factories together with residential quarters for its employees and assistants or manager" ; and the acquisition was considered as "likely to be useful to the public" (*see* sections 40 and 41 of the Act and the agreement executed under section 41). One of the conditions of the agreement is that "the land shall be used by the company as their property to be used in furtherance of the said objects". It might properly be contended that a lease of buildings to a private company, when the land had been acquired for these buildings as for a public purpose, was in breach of the agreement, for which breach Government could have resumed the land, and that therefore the lease, or any other agreement resembling it, could not be binding on the Government.

The same result would appear to follow from section 9 (*2*) of the Electricity Act which provides that "The licensee shall not at any time assign his license or transfer his undertaking, or any part thereof, by sale, mortgage, lease, exchange or otherwise without the previous consent in writing of the Provincial Government". Sub-section (*3*) proceeds to say that any agreement by the licensee contrary to sub-section (*2*) shall be void.

Submitted.

The unsuccessful plaintiff in Hubli Suit No.297 of 1944 has filed an appeal No.151 of 1945 in the Court of the District Judge, Dharwar. The appeal memo. is at pp.165-167 ante and may kindly be perused. The Deputy Engineer who is the respondent in the appeal has consulted the District Government Pleader and has been advised that the appeal is defensible and there is no need to file cross-objections. The Deputy Engineer has therefore requested Government to accord sanction to the defence on the grounds mentioned in the brief accompanying G.R.,L.D.No.870-A dated 29-1-1945. The Electrical Engineer to Government and the Public Works Department concur in his view and request sanction (vide pp.174-175). Sanction may be accorded to the defence of the appeal on the lines of the brief as requested. For orders.

P.A. The S.G.P does not appear to have communicated the result of the suit to this department. For facts, attention is respectfully invited to Mr. Sankindas note at p. 15-16 of the L.S. file put up below. The judgment is at pp 139-146 ante. The points raised in the memo of appeal are substantially covered by the brief at pp. 65-69 of the L.S. file and the trial court's judgment. However, the court's finding on the question of sanction under section 270 of the Government of India Act 1935 appears to be incorrect. (Please see para 3 of Mr Sankindas note referred to above). In other respects however the findings are

correct and the appeal will be defensible
Sanction may be accorded to the defence
on the lines of the brief and the
favourable grounds in the trial
Court's judgment.

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Suits:
Dharwar (Hubli).

In the matter of Hubli Electricity Co.

GOVERNMENT OF BOMBAY,
Legal Department,
Resolution No. 6126
Bombay Castle, 18th August 1945.

Read Government Resolution, Legal Department No.870A, dated the 29th January 1945.

Letter from the Electrical Engineer to Government to the ~~xxxxxx~~ Secretary to Government, Public Works Department, Bombay, No.L.R.M.11/1746, dated the 16th July 1945:- Forwarding a copy of notice and copy of Memorandum of Appeal No. 151 of 1945, preferred by the plaintiff in the suit noted in the margin in the

In the Court of the First Class Sub-Judge, at Hubli. Civil Suit No.297 of 1944. The Deccan Industrials and Estates Ltd. Hubli. ... Plaintiff; versus. (1) N.C.Raghavan, Deputy Engineer, Hubli Electrical Supply P.W.D. Hubli; (2) The Hubli Electricity Co.Ltd., Hubli. .. .. .. Defendants.	District Court at Dharwar, against the decision of the Joint Sub-Judge, - Hubli, dated the 17th April 1945,

and requesting sanction for its defence.

RESOLUTION:- Sanction is accorded to the defence of the Civil Appeal No.151 of 1945, in the Court of District Judge, at Dharwar, on the lines of the brief accompanying Government Resolution, Legal Department No.870-A, dated the 29th January 1945, and the favourable grounds contained in the judgement of the Joint Judge, Hubli, dated the 17th April 1945.

By order of the Government of Bombay,

original for P. N. MOOS,
Secretary to Government.

To
The Public Works Department,
The Electrical Engineer to Government, Bombay,
Mr. N.C. Raghavan, Deputy Engineer, Hubli Electric Supply ~~Xxxxx~~. P. W. D., Hubli,
The District Government Pleader, Dharwar.

Issued for approval & signature

2nd 15/8

P.A. 15/8/45

Issued. 15/8

Submitted after leave.

File in S.Dwr.6/45. [illegible]

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P. A [illegible]
24/9/45

Received on 4-X-1945 - 4 -6 -1945.
Registered on - - - - - - 4-6-1945.
Decided on - - - - - - - 7- 1946.
Duration - - - - - - - One year and one month.

IN THE COURT OF THE ASSISTANT JUDGE DHARWAR
At Dharwar.

Appeal No. 151 of 1945 from Decree in Civil Suit No.237 of 1944 of the Court of the Civil Judge Junior Division of Hubli (Mr. R.V.Vulkarni).

The Deccan Industrial & Estate Ltd., by its Manager, V.K.Belligatti of Hubli. } Appellant (Original Plff)

against

1. Nidamangalam Chakrapani Paravan Government Tahsildar Hubli
2. The Hubli Electricity Co., Ltd., Hubli } Respondent (Original Defts.)

Claim Rs. 7/-

Judgment.

This is plaintiff's appeal arising out of a suit brought to obtain a perpetual injunction restraining defendant No.1. from obstructing Plaintiff company in its possession and enjoyment of the plaint mentioned property.

Plaintiff is a limited company doing business as irons and brass founders, etc. Deft. is also a limited company which supplies electric energy to Hubli City. The premises of deft. No.2.company are situated in an extensive compound on the way to Vantmuri. A portion of the said premises was let out by deft No.2 to the plaintiff company. That portion is the property in suit shown in the red colour in a hand-sketch produced with the plaint. On 20th April 1944 the Provincial Government decided to purchase the undertakingof deft. No.2 company accordingly the Provincial Government directed that defendant No.2 company should hand over possession of the said undertaking to defendant No.1, Deputy Engineer, on the 1st of May 1944. The order was made under clauses (d) and (g) of section 5 of the Indian Electricity Act, IX of 1910. Defendant No.2 company however did not hand over possession of the undertaking to defendant No.1. Hence on 3rd May 1944 the Provincial Govt. made an order under rule 81 clause (3) of the Defence of India Rules authorizing defendant No.1 to exercise such effective

effective control as to keep the said undertaking in efficient working order and further prohibiting defendant No.2 from interfering with or obstructing defendant No.1 in discharge of his functions as stated above. In pursuance of the aforesaid order defendant No.1 took control of the undertaking in course of time In doing so, defendant No.1 prevented the employees of the plaintiff company from entering the compound of defendant No.2 company in order to go to the premises let out to the plaintiff company for doing work. Defendant No1 by his notice dated 20-5-44 prohibited the employees of the plaintiff company from entering the compound of defendant No. 2 company for doing any such work.

Plaintiff, therefore brought the suit to obtain the relief - stated above. Along with the plaint an apulication for a temporary injunction was filed (Ex.5). Defendant No.1 appeared in response to a notice issued and applied for time to file a written statement to the application for temporary injunction (Ex.7). As the written statement was not filed on the adjourned date, the lower Court at the request of defendant No1's pleader raised two issues styled as preliminary issues. The material for framing these issues was obtained from the facts alleged in the two applications for adjournment (Exs. 9 & 16). These were taken as comprehencive to dispose of the suit along with the application for a temporary injunction though defendant No.1 had not filed his written statement to the suit. Deft. No.1 seemed to have contended that the suit was barred under section 27 of the Government of India Act, 1935 and under section 80 of the Civil Procedure Code. On 24-2-1945, deft. No. 1 filed his written statement to the application for temporary injunction (Ex.23). One of the contentions raised was that as plaintiff company was not in possession of the plaint property it was not entitled to the injunction sought. It was made clear by a purshis dated 22-5-1944 that plaintiff-company was dispossessed before 22-5-1944 (Ex.24). Thereupon the Lower Court inquired of the plaintiff whether it was prepared to amend its plaint seeking actual possession from defendant No.1 (Ex.25). Plaintiff maintained that it continued to remain in possession of the property. On the next date, two more issues were raised. The first was about tenability of the suit for injunction to be decided from the frame of the plaint. The second was whether the suit was barred under section 47 of the

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Defence of India Act. The first issue framed was that the suit had not been instituted in the manner prescribed by law. The second issue was whether the suit was barred by limitation. The third issue was whether the plaintiff had not alleged in the plaint that it was in possession on the date of the suit. All these issues were heard as preliminary issues. They were taken to be pure questions of law. They were decided against the plaintiff. The suit was accordingly dismissed. Hence this appeal is filed.

The first question that arises for consideration in appeal is whether the sanction mentioned in section 270 of the Government of India Act is necessary as a condition precedent to the institution of the present suit. Defendant No1. was employed in connection with the affairs of the Government of the Province of Bombay. The lower Court held that sanction was necessary even though the relevant date "had passed so far as the affairs of the Province of Bombay are concerned, as the "relevant date" provided in the section had nothing to do with the last clause of section 270 of the Act. The lower Court observed that the mention of the relevant date refered to the former but not to the latter clause. The lower Court therefore held that in the case of acts of persons employed in connection with the affairs of a province, the sanction of the Govt. of that Province would be required even if such acts were committed after the date of the commencement of Part III of the Act. Section 270 of the Government of India Act, 1935, provided for indemnity for past acts. It provides that no civil or criminal proceeding shall be instituted against any person in respect of any act done or purporting to be done in the execution of his duty as servant of the Crown in India or Burma, before the relevant date. It is clear that the section intends to provide for acts of the past and not of the future. In Rajamal Sivanarain's Government of India Act, 1935, 1937 Edition, at page 281 an extract of the Parliamentary debate relating to this section is reproduced. It is stated therein that

> "The section deals with past acts. It does not refer to the act for, of an indemnity, but it is an indemnity of a kind. As far as the future is concerned, obviously it would not be right to give what would appear to be in any sense an indemnity in advance....."

An exception provided to the general provision mentioned above is that exception is that a civil or criminal proceeding can be instituted against any person in respect of any act done or pur-

purporting to be done in execution of his duty as a servant of the Crown in India or Burma before the relevant date with the consent of the Governor-General or the Governor of that province as the case may be. This was the only exception. The last clause of section 270 which according to the learned trial Judge had nothing to do with the expression "relevant date" comes under the exception referred to above. It follows that the consent of the Governor General in case of a person who was employed in connection with the affairs of the Government of India of the consent of the Governer of the Province in case of a person employed in connection with the affairs of the province will be requisite and will be a condition precedent to the institution of any such proceeding against a person in respect of anything done or purporting to be done in execution of his duty as a servant of the Crown before the "relevant date". It is for this reason that in clause (3) of section 270 the expression "relevant date was defined separately in relation to acts done by persons employed about the affairs of a Province and in relation to acts done by persons employed about the affairs of the Federation. It will appear that part III of the Act immediately came into operation, but it was apprehended that it would take time before the Federation was established Hence so long as the Federation is not established, it will be necessary to obtain sanction of the Governor General before institution of a civil or a criminal proceeding against a person who is employed in connection with the affairs of the Government of India for any act done or purporting to be done in execution of his duty as a servant of the Crown. As part III of the Act has already come into operation "the relevant date" has expired so far as the affairs of the province are concerned. Hence a civil or a criminal proceeding can be instituted against any person in respect of any act done or purporting to be done in execution of his duty as a servant of the Crown if he was employed in connection with the affairs of the province and if the act was done after part III of the Act came into operation. The learned trial Judge thought that clause (1) of section 270 of the Act" is not rather happily worded being one continuous and cumbrous sentence with so many commas and clauses mixed up and gives scope for some confusion". It is very difficult to say how confusion was caused to the learned trial Judge

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when the language of the section is quite clear. It will appear that the first comma is placed after the expression " before the relvant date" meaning thereby that a general proposition was enunciated barring suits and criminal proceedings against servants of the Crown in respect of acts done or purporting to be done in execution of their duties before the relevant date. It thus serves as an exception to the general rule laid down in the first part of the section. The conjunction "and" used in the last clause of the section shows that the exception applies to both the servants of the Government of the Province as well as the servants of the Govt of India. I therefore find that it was not necessary for the Plff. to obtain sanction under section 270 of the Government of India Act before instituting the present suit against defendant No.1.

Issue No. 2 raised by the trial Court was whether the suit was competent without giving a notice before suit to defendant - defendant No.1. Evidently the notice meant was one provided in in section 80 of the Civil ProcedureCode. That section provides that no suit shall be instituted against the Crown or against a public officer in respect of any act purporting to be done by such public officer in his official capacity. Plaintiff company did not say that any such notice was given to defendant No.1. It was not disputed that defendant No.1 was a public officer within the meaning of that expression used in section 80 of the Civil Procedure Code. The lower Court held that the act complained of was purporting to be done by defendant No.1 in his official capacity. The plaintiff's contention was that defendant No.1 was not entitled to obstruct the employees of the plaintiff from going to their business premises taken on rent from defendant No. 2. The plaintiff's further contention was that defendant No.1 had to exercise such effetive control as to keep the said undertaking in efficient working order consistent with the provisions of the Indian Electricity Act, 1910 and that for doing so it was not necessary for defendant No.1 to prevent the employees of the plaintiff company from attending their work unconnected with the undertaking. The lower Court observed that there could be no effective controle of the undertaking unless defendant No.1 as the officer of the Government to charge of the concern and of its buildings connected with or required for the business so taken

over. In appeal it was argued that it was not correct to assume that the Government of Bombay directed defendat No.1 to take charge of all buildings of defendant No.2 including the plaint premises. It is apparent that for the purpose of deciding issue No.2 the lower Court had to consider whether the order of the Government authorised defendant No.1 to take possession of the building of defendant No.2 not connected with the electricity undertaking and whether it was competent to the Government to pass any such order, if on construction it meant that the premises let out to the plff. were also tobe taken possession of by defendant No.1. This had to be done as the lower Court had to come to a conclusion whether ther act complaind of was purporting to be done by defendant No.1 in his official capacity. This expression and similar expressions used in section 270 of the Government of India Act and section 17 of the Defence of India Act involve consideration of the question of fact. In Hori Ram Singh v. Emperor (A.I.R.1939 Federal Court43) his Lordship Varadachariar J. observedthat the expression " act done or purporting to be done in execution of his duty" used inxx section 270 clause (1) of the Government of India Act was substantially one of fact to be determined with reference to the act complained of and the attendant circumstances. Thus the question whether ther act complainedxx of was purporting to be done by defendant No.1 in his official capacity was substantially question of fact. The appellant complained that the lower Court should not have decided this question as a preliminary issue as it involved consideration of a question of fact. It was also complained that plaintiff should have been given an opportunity to lead evidence before recording a finding on the question of fact. It will appear that when issue No.2 was raised defendant No.1 had not filed his written statement, either to the suit or to the application for temporary injunction. It is true that these issues were not decided till 24-2-1945 when defendant No.1 filed his objections to the granting of a temporary injunction. However till theseissues were decided, defendant No.1 had not filed his written statement to the suit. The lower Court therefore observed that it had made it clear to the parties thatt the xx issued framed at Ex. 17 were not only intended for passing an order on the application for a temporary injunction (Ex.5) but they were also meant for the suit itself, and the suit would be a

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allowed to proceed if under the issues so framed, the suit was found to be tenable. It is one thing to decide an application for a temporary injunction and another thing to decide the suit itself. It is clear from the provisions of the Civil Procedure Code that issues in a suit can only arise after defendant has filed his written statement to the plaintiff's suit. Assuming that Ex.23 was taken as defendant No.1's written statement for the purpose of raising preliminary issues, it is apparent that issue No.2 involves consideration of a question of fact. It was therefore a preliminary issue on a question of fact. In Somkabai Pandharinath V. Tukojirao Holkar (A.I.R. 1938 Bom. 128), it was held that Rule 2 of Order VI of the Civil Procedure Code did not give any power to the Court to frame a preliminary issue on fact. Under Order XV rule 2 of the Civil Procedure Code the lower Court could have taken action after framing all issues if no further evidence than what the parties could at once adduce was required for the decision on such issues. It therefore appears to me clear that the lower Court could not have decided issue No. 2 as preliminary issue. It is therefore not necessary to consider whether the act complained of was purporting to be done bydefendant No.1 in his official capacity. This question must be decide by the lower Court after defendant No.1 has put in his written statemnet and after all the issuess arising in the case are framed. It is not necessary for me to express an opinion that the finding recorded by the lower lower court on issue No. 2 is not correct. It is not necessary toconsider the merits of the contentions of the parties in respect of this issue. I hold that the lower Court was not entitled to decide issue No. 2 as a preliminary issue. It follows that the suit could not have been dismissed on a finding recorded on this issue.

One of the contentions raised in defendant No.1's written statement (Ex.23) was that the suit was barred under section 17 of the Defence of India Act. The lower Court held that defendant No. 1's act should be deemed to have been done in good faith. In support of this conclusion the lower Court observed that the orders passed by the Government covered all buildings within the compound of the electric company, which in the opinion of defendant No.1 were acquired for efficient conduct of his business. Apparently this was not the order

this was not the order passed by the Government of Bombay (Ex. 38) according the the lower Court the order (Ex.26) meant that defendant No.1 was entitled to take possession of all buidings within the compound of the company if in his opinion the were acquired for eficience conduct of its business. It was necessary for the lower Court to come to this conclusion as under section 17 of the Defence of India Act, no suit canlie against any person for an thing which is in good faith done or intended to be done in pursuance of this Act or any rules made thereunder. Rule 81 clause (3) of the Defence of India Rules provided for exercising control over whole or any part of existing undertaking under certain circumstances. Apparently the question whether the act was in good faith done or intended to be done in pursuance of the Defence of India Act or any rule made thereunder was substantially a question of fact. It could not have been treated as a question of law. Hence for the reasons stated in the preceding para it must be held that issue No.1B could not have been decided by the lower Court as a preliminary issue. The decree dismissing the suit on an adverse finding on this issue must therefore be reversed.

Lastly the finding recorded on issue No. 1A by the lower Court required to be considered. I have already mentioned above that defendant No.1 in his objections to the application for temporary injuction (Ex.23) stated that plaintiff company was not in possession of the plaint property and hence the suit for injuction was not tenable. This matter was made further clearly by Ex.24 wherein it was definitly stated that plaintiff had been dispossessed by the defendants before 22-5-1944 and that plaintiff was not in possession of the plaintproperty on the date of the suit. The lower Court therefore by Ex.25 called upon the plaintiff to amend its plaint and to seek possession. Plaintiff company made it clear in the purshis (Ex. 26) that it was in possessionof the plaint property on the date of the suit and hance it was not necessary to amend the plaint. On the next adjourned date, issue No.1A was raised by the lower Court. That issue is as follows:- "Is the suit for injuction prima facie tenable on the frame of the plaint that the Court might consider it fit to issue interim injuction?" Thus the frame of the suit was to be considered inorder to enable the lower Court to decide whether a temporary injunction should be issued or not. Strictly speaking this question would arise for consideration only if an appeal was lodged against the order refusing to grant a temporary injunction. All that the appellant has prayed for in

this s al is that the decree of th lower Court dismissing the suit be reversed. Howev as the lo er Court hel that s the plaintiff compan had not sued for possessi n as could e gotten from the laint, the plaint isclose no case of actual ossession and therefor e there was no cause of action for injunct in, it ll be necessary to consi r this question. In the aint plaintiff alle--ged that on 22nd ay 1947 defendant No.1 prevente plaintiff's em employees from entering the co ound of defend nt No.2 company. It as not stated in the pla nt in so many words that plaintiff com any was in possession of the plaint mentioned pr ises. But laintiff com any had stated in the laint that efendant No.1 had not right to prevent the plaintiff's em loyees from going to the pr mises. It s further stated in the plaint that in the said four buildings plaintiff com any had housed machinary, to be ete r uired for its busi--ness. Thus in the plaint plaintiff company had not stated that its was out of possessio of the plaint pro erty. According to the plaintiff company it was in possession of the plaint pro erty even though its em loyees were not allowed to ente the compound in which the property situated. The questi n that would then arise is whether the laintiff com any was in possession of the plaint pro erty, But the lower Court constued the plaint and held that according to the plaint plaintiff com any was not in possession of the plaint pro erty and hence it was not entitled to the injunction sought. In the lower Court plaintiff's learned leader filed an application (Ex.27) on 18-9-1947 stating that he was prepared to give further and better particulars under Order 6 rule 5 of the Civil Procedure Code showing that plaintiff company was in possession on the date of the suit and that it continued to be so even on 18-9-1947 inspite of the obstruct--tion offered by defendant No.1. This application was rejected by the lo er court. It is cle r that it was plaintiff's case that the plaint premises were in the compound in which defendant No.2 com--pany was located and as the com ound itself was locked plaintiff company was not able to have access to the plaint premises which were otherwise in its possession. The lo er Court called on the learned pleader for the laintiff to state whether any furt er elements or acts were required to indicate actual dispossession. The learned leader for the intiff replied that if the plaintiff company had got the buildings locked with its own key, it should be -

deemed to be in possession on the date of the suit. The lower Court was not prepared to accept this contention. It is apparent that in deciding issue No. 1A the lower Court almost came to a conclusion that plaintiff company was not in possession of the plaint property on the date of the suit. Apparently the question which was to be decided was whether it could be said on a construction of the plaint that plaintiff was in possession of the plaint property. As plaintiff has sought a permanent injunction it is apparent that it meant that it was in possession of the plaint property on the date of the suit. This was further made clear in the application (Ex.47). There is therefore no reason to come to a conclusion that in the plaint there was a virtual admission of dispossession on 23-5-1944. The lower Court held that as plaintiff stated in the plaint that on 23-5-44 its employees were prevented by defendant No.1 from entering the compound it was virtually dispossessed by defendant No.1. The question whether defendant No.1 had so dispossessed the plaintiff could not be decided from that fact alone. Plaintiff was entitled to lead evidence to show that it continued to remain in possession of the plaint property on the date of the suit. Moreover the scope of Issue No.1A was restricted and hence it was not necessary to decide that question. I hold that from the plaint it is clear that plaintiff company maintained that it was in possession of the plaint property on the date of the suit. Hence the finding recorded by the lower Court on Issue No.1A cannot be upheld.

The result of these findings arrived at by me as stated above is that the decree dismissing the suit should be set aside and the suit be remanded back to the lower Court for its being re-admitted in the register of Civil Suits and for its disposal according to law. The lower Court is directed to call upon defendant No.1 to file his written statement to the suit and to raise proper issues arising from the pleadings. As the contention which forms the subject matter of issue No.1 is already decided by me, it is not necessary to raise that issue again. As regards issue No.1B and issue No.2 it should not be taken that this Court has by setting aside the decree of the lower Court recorded findings on them in favour of the plaintiff appellant. Hence the following order is passed.

ORDER

Appeal is allowed. The decree passed by the lower Court dismissing the plaintiff's suit is setaside. The suit is remanded back to the lower

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for its being re-admitted in the register of Civil Suits in its original number and for its disposal according to law in the light of the observations made in this judgment. Costs of this appeal will be costs in the cause.

4th July 1946.

sd/
Assistant Judge.

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In the court of the Joint Subjudge Hubli.
(Second class) at Hubli.
Ex.33.
O.S. Civil suit No. 547 of 1944.

pleaders:-

Mr. Kalimath. 1. The Deccan Industrial and Estates Ltd., ..
Hubli, by its Manager, V.V. Belligatti of
Hubli..
.. Plaintiff

against

Mr.Billimoria 1. Mr.Mangalam Chakrapani Raghavan,
Mr.Peerzade for 1 Brahmin, 56, Government service, Hubli.
Mr. Rongale for D. 2. The Hubli Electricity Company Ltd., Hubli.
.. Defendants.

Claim Rs 70/-

The plaintiff sues to obtain a permenent injunction restraining defendent No.1 from obstructing the plaintiff in the possession and enjoyment of the suit buildings. declaration is sought to the effectthat the plaintiff is the owner of all the articles kept in the said buildings. permenent injunction is also sought to restrain the defendent No.1 from making wroungful use of those articles.

2. The plaint discloses the following allegations:-

The plaintiff is a corporation doing business as iron and brass founders, welders, repairers, machinists and manufacturers of industrial machinery. They have their place of business in portions of four buildings situated within the compound of defendent No.2's property taken on rent. The plaintiff has a number of employees doing work in the factory in those buildings shown in the sketch at schedule 'A' annexed to the plaint. Defendent No.1 is the owner of an electric undertaking which supplies electric energy at Hubli. Defendent No.1 claims to be an authorised controller of the undertaking appointed by the Government under the Defence of India Rules 81 (2) to control the affairs. His powers are limited only to issuing directions to those who are in actual charge

of the management of the Undertaking and not empowering him to take possession of its properties. He cannot also any claim to its properties in the hands of third parties like the plaintiff, and much less to obstruct such third parties in the legitimate enjoyment of those properties taken on rent from defendent No.2. In the said four buildings the plaintiff has housed machinary, tools etc, fecuired for its business. They belong to the plaintiff. efendents have no right or intrest in them. On or about 20th may last defendent No.1 sent a notice to the plaintiff that none of its staff should enter the premisses from 22n May and that they would not be allowed to work or stay within the compound of the power of the electric Company. The employees attended to their work as usual on 22nd ay. But on the morning of the next ay they were prevented from entering the compound itself. The gates of the compound are closed by the defendent No.1 who has continued to cause obstruction to the plaintiff Company and its employees from entering to do its work. He had no right to do so and has done it in his capacity, and not as the authorised controller. He is also asserting that the articles kept in the buildings in question belong to the Electric undertaking. The plaintiff's employees have every right to go to work in the said buildings. Hence this suit as considerable loss is being caused to the plaintiff by such wrongful acts of defendent No.1. Defendent No.2 is added as defendent No.1 is attributing to him the ownership of the articles kept in the buildings by the plaintiff.

2. Soon after the suit was filed the plaintiff sought an ex interim injunction for the reliefs claimed in the plaint by application Ex.5. Notice was issued to defendent No.1 who appeared and pleaded for time by his application Ex.9. In it he foreshadowed some of the fundamental objections to the suit of a far reaching consequence and prayed that as he was a Government servant and had taken action under the Defence of India Rules the suit was not tenable. At subsequent stages defendent No.1 kept on agitating in his application given for time like Exs. 15, and 16 that he had been seriously handicapped in that the suit had been sprung upon him by surprise without previous notice as a Government officer and that he had to obtain instructions from the solicitors to Government for his defence. But he disclosed some of the vital objections to the suit in Ex.16 also as he has done in Ex.9.

They are chiefly as follows:- Defendent 1 has personally no interest in the suit buildings or the articles. He was appointed by the Government of Bombay under the Defence of India Rules as Controller to take immidiate charge of the primises of the Hubli Electricity Company Limited and of its machinary and also to take actual to take actual possession of the Company's buildings. The Government by its own orders under the Defence of India Rules had taken over the management of the undertaking. The suit should have been, therefore filed against the Province of Bombay if at all any such suit could lie. No civil suit in fact can lie for action taken under the Defence of India Rules. It is also tenable without the previous sanction of the Government of Bombay under section 270 of the Government of India Act of 1935. The articles in the buildings belonged to the defendents No.2 and the Electric undertaking would be brought to a stand still if the articles are given away to the plaintiff.

4. To grant an interim injunction under the above circumstances would be unfair without going into the question as to whether the suit itself as maintainable. Notice was therefore given to both sides by the order below Ex 15, and 16 that issues arising on preliminary objections to the suit would be framed and disposed of as to the maintainability of the suit. They were given to understand that orders on Ex.5 would be passed and the suit would be allowed to proceed if only under the issues so framed the suit was to be tenable. I have made this clear here lest there should be any ground for an impression that the issues framed at Ex. 17 were only intendedto pass orders on Ex. 5 and not as to the suit itself. ~~Ixm~~ I may add here that by Ex. 19 defendent No.2 by its managing agents had admitted the plaintiffs claim and pleaded that defendent No.1 alone was liable for the illigal acts complained of in the plaint

5. The following issues which had accordingly been framed at Ex.17 with subsequent addtions were adopted for hearing as preliminary issues:-

1. whether the suit was competent against defendent No1

without obtaining sanction under the Government of India Act ?

1A. Is the suit for injunction prima faice tenable on the frame of the plaint that the court might consider it fit to issue interim injunction ?

1B. Is the suit barred under section 17 Defence of India Act ?

2. Whether the suit was competent without giving a notice befor suit to defendent No.1 ?

What order ?

6. My findings are:-

1. No

1 A. No.

1B. Yes.

2. No.

3 As per order.

Reasons

7. Issues No. 1 and 2:- Both these issues may be discussed together as the conditions for consideration as to sanction under the Government of India Act and as to notice under section 80 of the Civil Procedure Code are almost similar in charecter. It is admitted by the plaintiff that the Government of Bombay by its orders issued by due notifications purported to takeover the undertaking of the Hubli Electricity Co. Ltd., for management as an interim measure under the Defence of India Rules on account of some delay expected in its actual object of arranging the sale of the concern to others after the cancellation of licence previously granted to defendent No2 Company as the assets of the undertaking had to be got valued and as defendent No.2 was resisting the decision of the Government inthat respect. The Government after duly notifying their proposed action appointed defendent No.1 who was in their service as an Engineer as a controller authorised to manage the Electric undertaking pending the final arrangements about the concern. Defendent No.1 came down to Hubli under the orders of the Government so issued and proceeded to take charge of the undertaking with all its buildings and plant. He took actual possession of the main building in which the Electric plant is housed and began to

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to conduct its business as to which there is no dispute in this suit though the Electric Company is also formally impleaded. But the Company owned certain other buildings also in its extensive compound. The plaintiff claims that he has taken four such buildings on rent for certain business, unconnected with the electric undertaking but that defendent No.1 has prevented that business also in purporting to take over the concern of the Kubli Electricity Company Limited for management. It does not require much discussion to hold that the act of defendent No.1 so complained of is essentially done or purports to be done in the execution of his duties as a servant of the Crown in India, or as a person employed in connection with the affairs of a Province. An interesting argument was advanced by the learned pleader for the plaintiff that section 270 of the Government of India Act, 1935 refers to act done before "the relevent date", namely the date of the commencement of Part III of the Act, that part III had come into operation in 1937 whereas defendent No1's act was committed in May 1944 and that therefore it does not fall within the section 270. This really depends upon the construction of clause (1) of that section which is not rather happily worded being one continuous and cumbrous sentence with so many commas and clauses mixed up and gives scope for some confusion. As I interpret it, the reference to acts of a servant of the Crown in India or Burma before the relevant day is one independent Provision in the section about which sanction would not be required as to acts done after April 1937. That is in the case of a servant of the Crown in India. But the clause also contemplates in the last portion of the case of a person employed in connection with the affairs of a province in those case sanction is prescribed without reference to the date of commencement of Part III of the Act. The distinction is made between officers of the Central Government and of the Governers' Provinces. The mention of the relavent date refers to the former clause but not to the later clause. In the case of acts of persons employed in connection with the affairs of a Province, the sanction of Governor of that province will be required even if such acts are committed

after the date of the commencement of Part III of the Act. Hence I think that sanction was necessary for the plaintiff to obtain from the Governor of the province of Bombay for instituting this civil suit against defendent No.1 as a person employed in connection with the affairs of the province in respect of his act done in the execution of his duty.

8. Even assuming that the above interpretation is not warranted as to section 270 of the Government of India Act, the suit is clearly incompetent for want of a notice under Section 80 of the Civil proceedure Code. That Section admits of no ambiguity. The acts of defendent No.2. in insisting on taking charge of all the buildings belonging to the Hubli Electricity Company and situated within its compound as being required for the effecient control and management of the Electrick undertaking which is a public utility concern and with which outsiders could not be allowed intermeddle were clearly acts purporting to be done by a public offcer in his offical capacity. As he has rightly complained he has no personal interest in his act so done. He has acted or purported in good faith to act underthe orders of the Government of Bombay. If that Government has gone wroang in the interpertation of its powers the remedy of the plaintiff lies against the Government. Defendent No.1 cannot be personally proceeded against. At any rate he should have had clear two months notice stating the particulars required by Section 80. There could be no effective control of the undertaking unlessthe Government of Defendent No.1 as its officer took charge of the concern andof its buildings connected with or requied forh the business so taken over. Hence I donot think that defendent No. 1 had acted outside the scopes of the authority given to him or of the powers vested in the Government. Even an erroneous act under a mistaken belief as to powers would be entitled to protection; vide Maharani Guru Charan Kaur Nabha Vs. Province of Bombay Madras, A.I.R. 1941 Federal Court 1941. That ruling of the highest tribunal in India is also applicable to the Section 270 of the Government of India Act. As was observed in it, the ord " purporting" in that Section would be renderednugatory if the Section were limited to acts justified or authorised by Law. The same principle would hold good in the application of Section 80 of the Civil Proceedure Code. The Government officer

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could be entitled to protection under Section 270 of the Government of India Act in respect of a suit brought without previous sanction of the Provincial Government and under Section 80 of the Civil Procedure Code, in respect of a suit filed without previous notice of two months. I need not add here that the rule applies even to a suits for injunction where irreparable injury is likely to be cause to the plaintiff by having to wait for the expiration of two months after notice. This is now settled Law in view of Bhagchand Vs. Secretary of State, I.L.R.51 Bombay 725. Hence the findings.

9. Issue No.1B:- The defence have also taken an objection that the suit is bad in view of Section 17 of the Defence of India Act. Under it no suit lies against any person for anything done or intended tobedone in good faith in persuence of that act or Rules made there under. I have already pointed out how derendent No.1's act should be deemed to have been done in good faith. The Ruling of the Federal Court quoted above applies here also. Whether the Government had powers to issue the order to defendent No.1 to take over the concern of the Electric Company under the Defence of India Rules and hether the rule contained in them is ultra vires are points not strictly germane to the issue. The fact is there that the Government of Bombay directed defendent No.1 to take charge under those Rules and he has done so. The order covered all buildings within the Compound of the Electricity Company which in his own opinion were required for the efficient conduct of its business. There cannot be any ground to impeach his good faith. That is all that is required to be considered under 17 of the Defence of India Act. Hence the findings.

10. Issue No.1A:- The finding on this issue turns on the interpretation of the allegations made in the plaint for founding a claim to an injunction. If the plaintiff is not in actual possession of the buildings in question his remedy was plainly to seek such possession and not simply an injunction. It is to be noted that at the date osf suit the plaintiff was in actual possession of the buildings and of the articles referred to in the plaint. The

The theory is that from 23rd May 1944 the plaintiff Company by its agents has effectively been prevented from entering the compound of the Electricity Company within which the suit buildings are situated with all the articles placed inside those buildings and that thus they have been kept out of the reach of the plaintiff for conducting its own business and exercising its own rights of ownership over the articles detailed inthe plaint. The argument of the learned pleader for the plaintiff was that he is only complaining of obstruction to the peaceful enjoyment of property in his possession and not of any dis possession. I put it to him whether any further elements or facts were required to indicate actual indispossession. His answer was that if he has kept the buildings locked with his own key he should be deemed to have been in possession at the date of suit. I am not quite enamoured of such an argument to accept it. He has avoided giving a direct answer to the question I put as to what further acts were required to connote effective dispossession. The allegations in the plaint amount in my to a clear admission of actal and effective dispossession since 23rd May 1944. The plaintiff's agents or employees are not inside the compound of the buildings and being obstructed while in the peaceful use of ~~xx~~ those buildings and of their alleged articles. I, therefore, gave an opportunity by my order at Ex.25 to the plaintiff to reconsider and see whether the plaint should be suitably amended to make out a case of possession for sustaining the plea for an injunction but the suggestion has not been accepted as we see from the pursis given at Ex.26. An application was given at Ex.27 purporting to give clearer particulars. But that I think does not cure the initial defect in the plaint until and unless the statements already contained in the plaint are got deleted by substituting suitable allegations to make out a case of actual possession. The position now is that in the plaint there is a virtual admission of dispossession on 23-5-1944 and a vain assestion at Ex27 directly at conflict with the plaint. Ex.27 cannot be accepted as clearer particulars of the present pleading of the plaintiff. I, therefore, hold that the plaint discloses no case of actual possession and therefore no cause of action for an injunction.

11. Issue No. :- In view of the findings given above on the preliminary objections to the suit itself, I find that the suit is bar in

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law and cannot proceed. As costs while defendent No.1 should of course get his costs defendent No.2 does not merit any. He is apperently colluding with the plaintiff or at any rate supporting a suit which was not tenable. The pleaders of both parties were actively collaborating with each other during the arguments. In the result I pass the following Order.

ORDER.

Suit is dismissed. The plaintiff shall pay full costs as in a suit heard on merits of defendent No.1 and shall bear his own. No order as to the defendent 2's costs.

17-4-1945

Sd/- M.M.Kulkarni.
Joint Subjudge.

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D E C R E E.

In the Court of the First-Class Subordinate Judge,

at Hubli.

L. C. Civil Suit No. 297 of 1944.

Plaintiff:- 1. The Deccan Industrial & Estates Ltd., Hubli,

by its Manager, M.K.Belligatti of Hubli.

Vs.

Defendents:- 1. Nilamangalam Chakrapani Raghavan, Caste Brahmin, Age 56, occupation Government service, Tabib land, Hubli.

2. The Hubli Electricity Company Ltd., Hubli.

Suit filed on 1-11-1944.

Suit registered on 2-11-1944.

Claim Rs 70/-.

The plaintiff has to state as fallows :-

1. The plaintiff is a corporation registered in June 1943 underthe Indian Companies Act, with its registered office at Hubli. M.K.Bellagatti is the Manager of that Company with full powers to act for the Company, including the power to file this suit.

2. The company has been carrying on the business of iron and brass founders, welders and repairers, machinist and manufacturer of industrial machinary. Their factory styled as Siddharudha Engineering Works, is situated in portions of four buildings within the compound of Defendent These buildings are rented from them. The plaintiff, has on its staff, in May 1944 several employees who were all doing work in the said factory. These four buildings are shown in the sketch marked as schule A. It may be read

as part of the plaint.

3. On or about 20th May 1944, the defendent 1 gave a notice to the plaintiff, that from Monday the 22nd May 1944 none of the staff of the above said concern would be allowed to work or to stay within the power house compound or buildings therein. As the plaintiff had taken the buildings on rent, & its employees had every right to go to and work in the said building. The defendent No.1 had no right to obstruct them.

4. The employees of the plaintiff, however did their work as usual on the 22nd May 1944. But on the morning of 23rd May 1944 all the said employees were prevented from entering in -to the compound itself. The gates of the compound were closed and the said employees were prevented from entering, by posting the police and other servants of defendent No.1, at this instance. The defendent No.1 continues to cause this obstruction to this day. - Hence this suit for restraining the defendent No. 1, from causing the obstruction to the plaintiff in carrying on their legitimate work at their said factory.

5. In the said four buildings were kept reveral machinary, tools, applicances etc., including omong other Center-lathes, drilling machines, Lister Engins (5-B.H.P.) Electric welding machine, gas welding machine electrodes, welding rods, calcium carbide, shaftings, pullys etc. All these belong to the plaintiff. Neither defendent No.1 nor defendent No.2 has any right or title tothem. The plaintiff seeks to get a declaration of his title to all these articles.

6. Defendent No.2 is the owner of the four buildings and has given them to the plaintiff on rent. Defendent No.2 is also the owner of the Electric undertaking which supplies ~~&~~ Electric energy at-Hubli. Defendent No.1 claims to be an authorised controller appointed under the Defence of India Rules

55 111 27

Rule 81 (3) to control the affairs of the said undertaking. His powers as controller are limited only to issue directions to the persons having functions of management of the said undertaking. But it does not empower him to take possession of properties of the said undertaking. At any rate he has n right to ~~xkxim~~ lay any claim to the properties in the hands of the third parties like the plaintiff much less to obstruc them in the legitimate enjoyment of their properties. The said wroungful acts of defendent No.1 are committed in his personal capacity. They are incapable of being committed as a controller. The defendent No.1 further has been setting up false right or title of defendent No.2 to the machinary and other articles which really belong to the plaintiff., and which are lying in the above said buildings. Defendent No.2 is therefore impleaded as aformal party.

7. The cause of action arose on 23rd May 1944 when the obstruction was first caused and it continued from day to day.

8. The above said illegal and wroungful acts of the Defendent No.1 have caused and have been causing considerable loss and damages to the plaintiff in respect of which the plaintiff intends to file a separate suit for which, right is nereby reserved.

9 The cause of action has arisen at Hubli and the plaintiff and defendent 2 have their registered at Hubli. Defendent No.1 also resides at Hubli. Hence this has jurisdiction to try this suit.

10. For purposes of court fees this suit is valued at Rs 65/- in respect of the prayer for injunction as a consequence of dealaration in clauses (b) and (c) of para 11.

The prayer for injunction in clause (a) of para(11) is valued at Rs 5/- A court of Rs 6-12-0 is paid for both the reliefs. For court's jurisdiction it is the same.

11. The prayers are :-

a) That the defendent No.1 be restrained from interfering with or obstructing the plaintiff in the possession and enjoyment of the said four buildings situate within the compound of the power house at Hubli

b) That a declaration be given that the plaintiff is the owner of all the machinary, tools, applicances and other articles kept in the said four buildings.

c) That defendent No.1 be restrained from making wroungful use of any of the properties above reffered to

d) That plaintiff 's costs be awarded.

This suit coming on this day for final disposal before Mr. R.M.Kulkarni Joint II Class Sub Judge in the presence of Mr. Malimath Pleader for the plaintiff and M/S. Billimoria and Peerazade for defendent No.1 and Mr. Bongale For defendent No.2 it is hereby ordered and decreed as under

The suit is dismissed. The plaintiff shall pay full costs as in a suit heard on merits of defendent No.1 and bear his own. No order to the defendent 2's costs.

Bill of Costs.

57 113 29

Bill of Costs.

Plaintiff: 6		Defendent 1.		Defendent 2.
1. Stamp for Plaint	Rs 6-12-0	Stamp for Vakalat Exs. 8 and 10.	Rs 1-4-0	0-10-0 Ex.11.
2. Do. for Vakalat	Rs 0-10-0			
3. Do. for applications, Exs. 5, 6, 18, 27, and 29.	Rs 3- 2-0	Stamp for applications Exs. 9, 12, 15, 16, 21.	Rs 3-2 -0	1- 4-0 Exs.13 & 14.
Pleaders fees on Rs 65/-	Rs 15-0-0	Pleaders fees	Rs 15-0-0	15-0-0
		Total	Rs 19-6-0	16-14-0
5. Process fees Exs. 1 & 5.	Rs 6-0-0	Costs disallowed.		
Total	Rs 31-8-0	On vakalatnama	0-10-0	
Costs disallowed.		on applications Exs. 9, 12, 16.	1-14-0	1-4-0
			2-8-0	1-4-0
On applications Exs. 5,18,27, 29.	Rs 2-8-0			
Balance	Rs 29-0-0	Balance	16-14-0	15-10-0

Given under my hand and seal of the Court this ~~day~~ 17th day of April 1945.

Sd. P. B. Patil.
Karkun.

Seal.

Sd. R.M.Kulkarni.
21-4-1945.
Joint Sub judge.

Plaintiff's Pleader:- Mr.Malimath.

Defendent No.1's Pleader:- Mr. B.A.Peerazade.

Defendent 2's Pleader :- Mr. M.M.Bongale.

The parties in this suit are hereby informed to take back the

documents produced by them. If not, they shall be liable for desstruction after decision of the appeal, if preferred.

Seal.

True copy.

Sd:

Clerk of the court

59 17 2

L.S.No. 297 of 1944.

In the Court of the First Class Sub-Judge, Hubli.

Plaintiff:- The Deccan Industrials & Estates Ltd., Hubli, by its Manager, M.K.Belligatti of Hubli.

V E R S U S.

Defendants: 1. Nidamangalam Chakrapani Raghavan, caste Brahmin, age, 56, Occupation Government Service, Tahib Land, Hubli.

2. The Hubli Electricity Co.Ltd., Hubli.

Claim Rs. 70/-

In this the Written Statement of Defendant No. 1 is as follows :-

1. The Plaintiff's claim in suit is denied. for want of notice to defendant No 1
2. The suit is barred under Section 80 of Civil Procedure Code.
3. The suit is also barred not maintainable under Section 17 of the Defence of India Act.
4. The frame of the suit as framed is bad, without making Government a party. As Government is a necessary party for an effective decree, the proper procedure for plaintiff would have been to implead Government as well as defendant No 1
6. The Plaintiff's allegations regarding his title and possession of the suit properties are denied.
8. In this suit the Defendant No. 1 cannot be made a party personally as he has no personal interest. The suit should be filed against the Province of Bombay, if so advised.
7. That this Defendant personally has no personal interest in the property. As a result of Government Order No. 5660/36 dated 3rd May 1944 read with Defence of India Rules 81 (3) read with Section 5 (b) and (g) of the Indian Electricity Act, 1910 and the effective control of the Hubli Electricity Undertaking, together with its p

Mr. M
Please refer as in W.S. as amended. For para 5 see appended note
11/12

5: see W.S. para 5 as appended note

5. The plaintiffs suit for the injunction is not maintainable. It is amplified in the prayer to injunction that the plaintiffs was in possession and enjoyment of the buildings at the date of suit. As a matter of fact, whatever may have been the position before 22nd May 1964, after that date the plaintiffs own applications would show that its employees were prevented by defendant No1 or the police from entering the compound of the power house and that defendant No1 was making use of the machinery and other articles in the aforesaid buildings. The plaintiffs must therefore be held to have been dispossessed from 22nd May 1964 and in the circumstances a suit for mere injunction will not lie. The plaintiffs must sue for the substantive relief of possession. Otherwise, the suit ought to fail

63
121

premises and property inside and outside the same, came to be vested in Defendant No. 1, as Deputy Engineer appointed for the purpose, in the same Order. Therefore this Defendant ~~is not personally liable.~~ was acting purely in the execution of his duty and is not personally liable.

8. The allegations in para 1 and 2 of the plaint, are denied. It is admitted that Defendant No. 1 gave notice on 22nd May 1944. Further allegations made in para 3 are denied. It is ~~[contended]~~ submitted that the Plaintiff is a dummy concern brought into being for fraudulent purposes of Defendant No. 2, shortly after the notice of 3rd April 1943. Defendant No. 2 itself is a share holder of the Plaintiff Company, and Plaintiff Directors and some of the share holders are all petty employees of Defendant No. 2.

9. The Foundry and the Machine shop were extended or put up by Defendant No. 2 and the transactions done in the name of the Plaintiff were entered in the books of Defendant No. 2. It is contended that all the articles mentioned in para 5 of the plaint belong to the Hubli Electric Undertaking. All these are fixed in the main Power House building and these are absolutely essential for the running of the Hubli Electric Supply. If the Plaintiff is allowed to take charge of these machineries, the Power House shall have to be automatically stopped.

10. It is ~~contended~~ submitted that the entries in Accounts in respect of rent or sale price of materials are bogus entries, and that they do not confer any right on the Plaintiff.

11. The land on which all the buildings stand was acquired by Government for Defendant No. 2 for specific purposes as provided for in Part VII of the Land Acquisition Act. It is ~~contended~~ submitted that a lease of buildings to a private Company was a breach of agreement for which ~~breach~~ Government would have resumed the land and that therefore that lease or any other agreement resembling it, would not be binding on the Government

12. It is ~~contended~~ submitted that the alleged lease and sale of Machinery etc. by Defendant No. 2 to Plaintiff is void under Section 9(2) of the Electricity Act.

13. ~~It is contended that Plaintiff's suit for mere injunction~~

65
123-34

injunction would not lie. Present possession is necessar for the issue of an injunction. Plaintiff has not sued for substantial relief of possession, and this suit ough to fail.

13 ~~14~~. It is dangerous to the Hubli Electric Supply to allow t Foundry to be worked within the premises of the Company where large storage of crude petroleum is stored in the ~~near~~ vicinity. ~~is~~ In the Foundry iron smelting has been and will be done on a large scale and there is danger of fire to the same.

~~14~~. The allegations in para 5,6,7 and 8 are denied.

15. It is ~~certified~~ denied that Plaintiff is not entitled to any reliefs and the suit be dismissed with costs.

129 67

L.S. No. 297 of 1944.

In the Court of the First Class Sub-Judge, Hubli.

Plaintiff:- The Deccan Industrials & Estates Ltd., Hubli, by its Manager, M.K.Belligatti of Hubli.

V E R S U S.

Defendants:- 1. Nidamangalam Chakrapani Raghavan, Caste Brahmin, age, 56, Occupation Government Service, Tabib Land, Hubli.

2. The Hubli Electricity Co.Ltd., Hubli.

Claim Rs. 70/-

In this the Written Statement of Defendant No.1 is as follows :-

1. The Plaintiff's claim in suit is denied.
2. The suit is barred for want of notice to defendant No. 1 under Section 80 of Civil Procedure Code.
3. The suit is also barred under Section 17 of the Defence of India Act.
4. The suit as framed is not maintainable without making Government a party thereto. As Government is a necessary party for an affective decree, the proper procedure for plaintiff would have been to implead Government as well as defendant No. 1.
5. The Plaintiffs suit for mere injunction is not maintainable. It is implied in the prayer for injunction that the plaintiff was in possession and enjoyment of the building at the date of the suit. As a matter of fact, whatever may have been the position before 22nd May 1944, after that date the plaintiff's own applications would show that its employees were prevented by defendant No. 1 or the police from entering the compound of the power house and that defendant No.

No. 1 was making use of the machinery and other articles in the aforesaid buildings. The plaintiff must therefore be held to have been dispossed from 22nd May 1844 and in these circumstances a suit for mere injunction will not lie. The plaintiff must sue for the substantive relief of possession. Otherwise, the suit ought to fail.

6. The Plaintiff's allegations regarding his title and possession of the suit properties are denied.

7. This Defendant has no personal interest in the property. As a result of Government Order No. 5660/36 dated 3rd May 1944 read with Defence of India Rules 81(3) read with Section 5 (b) and(g) of the Indian Electricity Act, 1910 the effective control of the Hubli Electricity Undertaking, together with its premises and property inside and outside the same, came to be vested in Defendant No. 1, as Deputy Engineer appointed for the purpose, in the same Order. Therefore this Defendant was acting thereby in the execution of his duty and is not personally liable.

8. The allegations in para 1 and 2 of the plaint, are denied. It is admitted that Defendant No. 1 gave notice on 22nd May 1944. Further allegations made in para 3 are denied. It is submitted that the Plaintiff is a dummy concern brought into being for the fraudulent purposes of Defendant No. 2, shortly after the notice of 3rd April 1943. Defendant No. 2 itself is a share holder of the Plaintiff Company, and Plaintiff Directors and some of the share holders are all petty employees of Defendant No. 2.

9. The Foundry and the Machine shop were extended or put up by Defendant No. 2 and the transactions done

done in the name of the Plaintiff were entered in the books of Defendant No. 2. It is contended that all the articles mentioned in para 5 of the plaint belong to the Hubli Electric Undertaking. All these are fixed in the main Power House building and these are absolutely essential for the running of the Hubli Electric Supply. If the Plaintiff is allowed to take charge of these machineries, the Power House shall have to be automatically stopped.

10. It is submitted that the entries in Accounts in respect of rent or sale price of Materials are bogus entries, and that they do not confer any right on the Plaintiff.

11. The land on which all the buildings stand was acquired by Government for Defendant, No.2 for specific purposes as provided for in Part VII of the Land Acquisition Act, It is submitted that a lease of buildings to a private Company was a breach of agreement for which Government would have resumed the land and that therefore the lease or any other agreement resembling it, would not be binding on the Government.

12. It is submitted that the alleged lease and sale of Machinery etc. by Defendant No. 2 to Plaintiff is void under Section 9(2) of the Electricity Act.

13. It is dangerous to the Hubli Electric Supply to allow the Foundry to be worked within the premises of the Company, where large storage of crude petroleum is stored in the vicinity. In the Foundry iron smelting has been and will be done on a large scale and there is danger of fire to the same.

14. The allegations in para 5,6,7 and 8 are denied.

15. It is submitted that Plaintiff is not entitled to any reliefs and the suit be dismissed with costs.

District Government Pleader,
Dharwar.

I District Government Pleader, Dharwar, do hereby declare that what is stated in paragraphs 1 to 15 above is true according to the information received and believed to be true. This verification is made at this day of December 1946.

District Government Pleader,
Dharwar.

Suits: 135/71

Dharwar (Hubli)
In the matter of Hubli Electricity Co.

GOVERNMENT OF BOMBAY.
Legal Department,
Resolution No. 961
Bombay Castle, 27th January 1947.

Read Government Resolution, Legal Department, No. 6126 , dated the 18th August 1945.

Letter from the District Government Pleader, Dharwar No. 1236, dated the 1st November 1946, forwarding uncertified copies of the judgement and decree in Civil Appeal No. 151 of 1945 filed in the plaintiff in the suit noted in the margin which was heard by the Assistant Judge, Dharwar on 17th April 1945 when the following order was passed:-

In the Court of the First Class Sub-Judge at Hubli.	:	
Civil Suit No. 297 of 1944.	:	
	:	
The Deccan Industrials and Estates Ltd., Hubli .....Plaintiff;	:	
versus	:	
(1) N.C. Raghavan, Deputy Engineer, Hubli Electrical Supply, P.W.D., Hubli;	:	
(2) The Hubli Electricity Co. Ltd., Hubli.... ... ..Defendants:	:	

"Appeal is allowed. The decree passed by the lower Court dismissing the plaintiff's suit is setaside. The suit is remanded back to the lower court for its being re-admitted in the register of Civil Suits in its original number and for its disposal according to law in the light of the observations made in this judgment. Costs of this appeal will be costs in the cause. "

RESOLUTION. The result of the appeal is recorded.

By order of the Governor of Bombay,

Ref. for signature
HBB
27/1
S.A.S.

Original. R. M. Mehta
R. M. Mehta,
Assistant Secretary to Government.

To
The Public Works Department,
The Electrical Engineer to Government, Bombay,
Mr. N.C. Raghavan, Deputy Engineer, Hubli Electric Supply, P.W.D. Hubli.

BM. Issued
Sdk
27/1.

Sobd after issue

File in S. Pwr. 6/45.

KBB
28/1

G.A.S

S. Pwr 6/45
28/1

+57 73 +

L.D.R.I. No. 11970
dated 31-12-46.

Submitted.

This is a proposal to engage a special counsel in Hubli Civil suit No. 297 of 1944 which has been remanded back to the trial Court by the Asstt. Judge, Dharwar. The Deputy Engineer, Hubli Electric Supply, P.W.D. has recommended in consultation with D.G.P., Dharwar two Pleaders from Dharwar Viz. Mr. Dixit and Mr. Jamkhandi and they have stated their fees as follows :-

Mr. Dixit :-

1) Rs. 200/- Reading fees
2) Rs. 50/- per day
3) Rs. 5/- per day of hearing for expenses.

Mr. Jamkhandi :-

1) Rs. 200/- Reading fees
2) Rs. 50/- per day
3) expenses as per bills to be submitted from time to time.

The Deputy Engineer requests that either of the pleaders may be appointed to conduct the case with the help of the Sub-Government Pleader. It would be seen from the fees asked for by the two pleaders that they are materially similar except for the minor item of daily expenses. It is for orders which of the two should be appointed. Orders may issue after u.r. to F.D.

2.9.47
31/12

SAS In view of the letter of Deputy Engineer, this case may be considered fit for the engagement of Special Counsel. Perhaps the senior of the two Pleaders may be engaged

But a fee of Rs 200 for reading papers appears somewhat exaggerated. For order

RLL
31/12/46

ALR I know the Divisional Commissioner. He is an able
RLA. pleader. He may be engaged on fees as proposed. Reading fees may be reduced to Rs 100

RE 2/1

The D.C.P must not appear any more for the P.P. This must be most clear order. For his past appearances fully paid, was it remission of Govt later?

Regarding scale of fees of Messrs Dixit & Jamkhindi when Scale have been adopted before in similar matter

I would rather leave the D.C.P only. Let him be allowed to appear as amicus Govt interests

2/1

153 75 T3

Resubmitted with reference to Secy's note dated 2-1-47.

2. Mr. Malimath has been appointed as D.G.P. from 1st August 1946. His previous appearance on behalf of the plaintiff cannot be objected to but as desired by R.L.A. instructions will be issued to him not to appear anymore for the plff. Probably he is not appearing for the plff. at present.

3. As regards fees, Special counsel have rarely been appointed in District places and no suitable precedent is available.

2462
3/1/47

SAS There are no fixed scales of fees payable to a Special Counsel appointed under Rule 5-6 of L.O. Rules. It is left to the officer recommending the appointment of special counsel to propose the scale of fees.

RMM
3/1/47

A.L.R

R.L.A.

C may see if there are any precedents

RR 31,

C

P.T.O.

[redacted] submitted with reference to A. L. R's query overleaf.

In civil cases there does not appear to have any precedent for engagement of a special counsel in Mofussil. In case the services of D. F. P. are not available his Assistants in ~~engaged~~ appears.

SW
7-1
Supdt.

S.A.S. R.L.A. May please see his note on p. 12 ante

RLA
8/1/40

N.L.R

R.L.A

It is presumed that the Asstt Govt Pleader (Mr Malapur) is not considered suitable to tackle this important case

RK 9/1

R.L.A Is the A.G.P really incumbent to conduct the matter Conduct the trial Where Counsel

RK 9/1.

77 173

No. 4098
Office of the
Remembrancer of Legal Affairs.
Bombay Castle, 22nd April 1947.

To

N. C. Raghavan Esq., Deputy Engineer In charge,
Hubli Electric Supply, P.W.D. Hubli.

Subject:- L.C. Suit No.297 of 1944.
The Deccan Industrials & Estates.
vs.
N.C.Raghavan and
The Hubli Electric Co. Ltd. Hubli.

Sir,

With reference to the subject noted above, I have the honour to forward herewith the certified copy of the High Court judgment in Suit No.1385 of 1944 for filing in the case noted above and to request you to return the same when no longer required.

Your obedient servant,

o.c.

For Remembrancer of Legal Affairs.

Subd. for signature

KBB
22/4

S.A.S.

Copy forwarded to

The P.W.D. for information. (with P.W.D. file No. 5660/36)

CC.

Messrs. Little & Co. 79 45

Certified copy Rs.46/-.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY.

ORDINARY RIGINAL CIVIL JURISDICTION.

Suit No.1385 of 1944.

The Hubli Electricity Company, Ltd . . . . . Plaintiffs.

V/S.

The Province of Bombay . . . . . Defendants.

Mr. H.D.Banaji for the plaintiffs.

Mr. M.L.Manecksha for the Defendants.

- - - - - - - - -

11th April 1945. Coram:- Blagden.J.

ORAL JUDGMENT:-

This is the second of two connected suits between the same parties. I have already disposed of one, and for the earlier history of their electionship between the parties, reference may be made to my judgement in that case.

The present suit calls in question the validity of an order purporting to have been made by the defendants under Rule 81(3) of the Defence of India Rules on the 3rd May 1944 but before considering its validity, the validity of certain acts admittedly done in pursuance of it, it is necessary to look into a little comparatively ancient history. The earliest document to which I need call attention is dated the 27th November 1941, a letter from a Deputy Secretary to the Government of Bombay to the plaintiffs, enclosing an extract from the audit report of the Accountant General, Bombay, on the accounts of the plaintiff company for the year 1940-41, That includes a paragraph relating to certain buildings and records an agreement between the plaintiffs and the rating authority, excluding certain buildings as not being used primarily for purpose connected with the supply activities of the company. Those buildings so excluded were in fact taken possession of in the circumstances to be later set out, but it is important to note that they were only "primarily" so used: they were not said to be wholly disconnected with the company's supply activities. Various letters have been put in the course of the proceedings; I do not think it is necessary for

me to refer to all of them, but in order to show what the position was at the time the order now in question was made, the effect of a few of them must be briefly stated.

The defendants revoked the licence of the plaintiffs under the Electricity as from the 1st May 1944 by a notice dated the 28th January 1944. The validity of that notice I have already decided in the other suit. On the 1st and 2nd March 1944 the defendants advertised for purchasers of the plaintiffs undertaking. The period of three months during which a local authority has an option to purchase an electrical undertaking has not yet expired, and I do not know why those notices were issued at that time. It may be observed that the notice terminating the licence allowed a bare three months for getting everything fixed for the supply of electricity when it expired and it may well be that the defendants were over-optimistic in thinking that things could be fixed up in so short a period. But I do not think that the fact that the three months during which the local authority's option might have been exercised has not expired need lead to any sinister inference about those advertisements, for it may well be that the local authority had already intimated that it did not want to exercise its option. On the 30th of March 1944, an order was made under Rule 81 (2) of the Defence of India Rules, requiring the plaintiffs to comply with directions to be issued from time to time by the Electrical Engineer to Government or any officer authorised by him in respect of certain matters. By a letter of the same date, notice of that order was given to the plaintiffs. On the fourth of the following month Mr. Raghavan was appointed by the Electrical Engineer to Government as the Officer authorised in pursuance of that order. No importance, however, need by attached to any of those orders because both of them expired with the month of April, when the plaintiffs' licence expired. On the 18th April the defendants wrote to the plaintiffs stating that they has appointed a gentleman called Mr. Larsh as a valuer under section 5 (a)

of the Electricity Act, 1910. I do not know what in fact Mr. Larsh has done about the matter since, but it may well be that his efforts were held up owing to an injunction obtained by the plaintiffs in the other suit. On the 29th of April the defendants wrote to the plaintiffs a letter whereby they said that they were pleased to intimate to them that they had elected to purchase the undertaking and requiring the plaintiffs to sell the undertaking to them at a price to be determined as provided under clause (b) of section 5 of the Electricity Act. This they did, they said, in pursuance of the powers conferred upon them by clause (d) of section 5 read with clause (g) of the said Act. So far this notice would have been quite unexceptionable. Assuming that the local authority had stated that it would not exercise its option, Government was entitled to purchase, and in due course would have to pay the price ascertained, as provided in that - - section. I need not now go into details of how that price was to be ascertained. Lastly they were quite right in calling attention to sub-clause (g) of that section, because in the events which has then happened, Government were, pending the ascertainment of the price and completion of the purchase, entitled to work the plaintiffs' undertaking. But Mr. Banaji points out, and I think rightly that they went, probably by sheer inadvertance, a step too far in the concluding sentence of their letter, whereby they required the plaintiffs to hand over possession of their undertaking to Mr. Raghavan on the 1st May 1944. The plaintiffs were not bound to do that. It seems to me quite clear that a vendor, apart from a special contract, is not bound to part with possession of the property he is selling until he is paid the purchase price. The point is put in a nut shell in the Sale of Goods Act, where it provides that payment and delivery are concurrent conditions. This letter, written on the 29th of April, a Saturday, was delivered to the plaintiffs on Sunday, the 30th, that not being a working day. It was answered by 2 letters, one to the Deputy Engineer at Hubli, who is none other than Mr. Raghavan, and the other to the Secretary, Public Works Department (the defendant). By the first of these letters, the Managing Agents of the plaintiffs said that they regretted their inability to hand over possession of their [illegible] until Government have made a definite offer of the

urchase price and have sent to a schedule of the property to be handed over and until we have accepted the same". They might perfectly have gone a step further and said, "We will not hand over possession to you until you pay us in cash" However they went on to say in that letter, We are also unable to allow you to work the undertaking in the absence definite orders from Government to that effect". Now that letter, like the one which was under answer, was not happily worded, and worded as it was, on the face of it, it denied the right of the defendants under section 5(g) of the Act, and really invited the Government to make some sort of an order which would compel the plaintiffs to respect that right, and I think it is rather important to observe that that is apparently how it was read. If that is how it is read, it seems to me that it hardly lies in the mouth of the plaintiffs now to complain of the emergency powers having been exercised.

The other reply was a little longer; set out the time that the letter was received late in the afternoon of Sunday, when the letter conveying Government's intention to purchase had been served on the plaintiffs and took the point, which may or may not be well founded - I need not express any opinion upon it - that those controlling the plaintiff company were unable to sell or dispose of the whole of its undertaking except with the consent of the company in general meeting, regard being had to section 86(a) of the Indian Companies Act. The result was, of course, that when these letters were written, on the morning of the 1st of May, there was no electric light in Dubli because there was nobody there who was legally and physically in a position to produce any. So also was the case on the evening of the 1st of May and the 2nd and 3rd of May 1944. On the 3rd day Government in fact passed the order, the validity of which is now in question. That really is the history of the matter down to the date of the making of that order.

Now I will come to the Defence of India Rules and try and see exactly what those powers were. First of all

the Central Government has been empowered to delegate, and it has delegated, a lot of the powers to the Provincial Governments including the defendants, to make rules, such rules as appear to be necessary or expedient for securing the defence of British India, the public safety, the maintenance of public order of the efficient prosecution of the war, or for maintaining supplies and services essential to the life of the community. Section 2, sub-section 2 of the Defence of India Act is of immense length, and fortunately I need not read very much of it. It provides as follows:

"Without prejudice to the generality of the powers conferred by sub-section (1), the rules may provide for, or may empower any authority to make orders - providing for, all or any of the following matters, namely, ... "

(here I jump at once to No.(xx) under which the order now in question purports to have been made).

"(xx) the control of agriculture, trade or industry for the purpose of regulating or increasing the supply of, and the obtaining of information with regard, to articles of things of any description whatsoever which can be used in connection with the conduct of war or for maintaining supplies and services essential to the life of the community.".

It is important to contrast sub-clause (xx) with sub-clause (xxiv), which runs as follows:

"(xxiv) the requisitioning of any property, moveable or immoveable, including the taking possession thereof and the issue of any orders in respect thereof;"

Clearly, I think, the Legislature did not contemplate under the head of "Control" the act of taking possession, but whether it contemplated it or not, the question which arises here, is, whether the words it has used are not in reality wide enough to include it, and in considering what "control" means, a great deal must, in my opinion, depend on the nature of the thing to be controlled and the purpose for which the control is to be exercised; nor must it be forgotten that in doing what they did, the defendants were entitled to rely on any powers given to them. Just as a master who dismissed his servant on the ground that he has stolen his waistcoat is entitled

in a suit for wrongful dismissal, to say that he had stolen his cigarettes, so when people are used in what in substance is a suit for trespass, they are entitled to set up any legal right entitling them to enter on the property they are alleged to have trespassed on, even though they may have claimed to enter it in pursuance of a different and on mistaken ground.

For the moment I do not think I need notice any other portion of the act itself, but I turn now to the Defence of India Rules, the first thing to notice is that Rule 2 defines requisition in the following terms.

"requisition" means in relation to any property to take possession of the property or to require the property to be placed at the disposal of the requisitioning authority". Having so defined requisition the rule making authority has proceeded in part VII of the Rules, Rule 75(1), to make provision for requisitioning a property. Rule 75(a) (1) reads as follows:

If in the opinion of the Central Government or the Provincial Government is necessary or expedient so to do for securing the defence of British India, public safety, the maintenance of public order or the efficient prosecution of the war, or for maintaining supplies and services essential to the life of the community, that Government may by order in writing requisition any property, moveable or immoveable, and may make such further orders as appear to that Government to be necessary or expedient in connection with the requisitioning:

Provided that no property used for the purpose of religious worship and no such property as is referred to in rule 72 shall be requisitioned under this rul

Rule 68 deals with requisitioning of a vessel., That does not concern us; and rule 72 deals with the requisitioning of aircraft which also does not concern us.

Having regard to the definition of "requisition" it is clear that that order contemplates acquiring possession of property, and the rule goes on to provide for a further stage in

the transition of property from the subject to the Government, by providing machinery for acquisition of property requisitioned. Rule 81, under which the Government have here claimed to act, does not contemplate any property vesting in Government, either immediately or ultimately, as a result of action under it. That is the important distinction, I think, between Rule (a), which is made under sub-section (4) of Section 5 of the parent Act, and Rule 81, which is made under sub-section 24.

Rule 81, to which I now turn, is an attempt to exercise part of the powers conferred by section 5, sub-section 20, of the parent Act, powers in relation to agriculture, for example, having been already exercised by rule 80 (b). However framed rule 81 in its present form clearly had in mind primarily the taking of orders thereunder in relation to electrical undertakings, and one of the main purposes of the rule, no doubt, was to prevent the sabotaging of such installations by persons calling themselves "fifth columnists" or by anybody else. The rule, after defining an undertaking as any undertaking by way of trade, or business, including the occupation of handling, loading or unloading goods in the course of transport, provides as follows:

> (2) The Central Government or the Provincial Government so far as appears to it to be necessary or expedient for securing the defence of British India or the efficient prosecution of the war, or for maintaining supplies and services essential to the life of the community, may by order provide-"

Various things are mentioned, of which the first material one appears to be clause (c) which is as follows:

> "(c) for regulating the carrying on of any undertaking engaged in, or capable of doing work appearing to the Central Government or the Provincial Governments essential to any of the aforementioned purposes, and in particular

five things have been given, of which the important here is

"(v) for requiring the undertaking to provide adequate safeguards against sabotage."

Again, I do not think that the rule contemplates taking possession of property, moveable, but whether it contemplates it or not, it may be wide enough to allow that to be done. The rule is extremely long, and I am not going to read the whole of it, but sub-clause 3 provides:

> "If it appears to the Central Government or the Provincial Government that it interests of the defence of British India or the efficient prosecution of the war, or for maintaining supplies and services essential to the life of the community, it is necessary to exercise control over the whole or any part of an existing undertaking, that Government may, by order authorise any person (hereinafter referred to as an authorised controller) to exercise, with respect to the undertaking or any part thereof specified in the order, such functions of control as may be provided by the order; and so long as an order made under this sub-rule is in force with respect to
>
> (a) any undertaking---
>
> (a) the authorised controller shall exercise his functions in accordance with any instructions given to him by the Central Government or the Provincial Government, so, however, that he shall not have power to give any directiond inconsistent with the provisions of any Act or other instrument determining the functions of the undertakers except in so far as may be specifically provided by the order; and
>
> (b) the undertaking or part shall be carried on in accordance with any directions given by the authorised controller in accordance with the provisions of the order, and any person having anyy functions of management in relation to the undertaking or part shall comply with any such directions."

There again what the rule no doubt contemplates is the controller going to a place where someone else is carrying on operations and giving orders to that some one else as to how he should carry on those operations. But what is to happen if the undertaking is, as it was here, in the hands of some one who cannot lawfully carry it on, and consists merely of the physical means of performing its functions without the legal right to perform them? Secondly, would it not be possible under clause (b) for the controller to require or to direct a person having functions of management in relation to the undertaking to go away and not exercise those functions of management at all? Mr. Banaji contended before me tha the directions to be given to the person having functions of manage ment must be directions to him in his capacity as a person having those functions and in relations to the discharge of those function and that it would not be competent to the controller to say to the person concerned "Go away and keep away, and do not come into this place again: I am going to exercise your functions" That, I think may well be where the person still has functions of management, Where the functions of management consisted in managing the conduct of operations which could no longer be lawfully conducted by the person or body of persons for whom the manager was to manage, things may be very much different. In any case it must be borne in mind, as I said before, that the persons who were entitled to work the undertaking here were the defendants by virtue of sections 5(g) of the Electricity Act and the persons who were entitled to control the work of the undertaking were the persons appointed by th defendants under this rule, and it seems to me really that those two things merge into one another with the result that the defendants are controlling their own operations, which operations which they are entitled to conduct, unless indeed the order itself was bas on the ground that it was not passed as required by the law. It remain only to notice under the rules that where. for example, entry on land is contemplated by the rules, it is so expressly prpvided for, as for example, in rules 124 and 125. Rule 132 is of some importance.

"Any authority, officer or person who is empowered by or in pursuance of the Defence of India Act, 1939, or any of these Rules to make any order, or to exercise any other power may, in addition to any other action prescribed by or under these Rules, take, or cause to be taken, such steps and use, or cause to be used, such force as may, in the opinion of such authority, officer or person, be reasonable necessary for securing compliance with, or for preventing or rectifying any contravention of, such order, or for the effective exercise of such power".

That seems to me a very sweeping rule, and one whose width, so far, as far as I know has not very often been judicially noted. Mr. Banaji wants me to constue it as having reference only to specific person or officers referred to by name, or more usually. by descirption in the Act and the Rules, but I do not think that that is right, becuase first of all, it is necessary to give some meaning to the words", or in persuance of " Obviously, it gives powers to persons other than persons who are given powers by the Act or Rules. Now Mr. Banaji says that the people who are given powers in pursuance of the Act and Rules are the persons who are therein named or described: to whom by the express terms of the Act or Rules powers are or may be entrusted. But in most, if not all cases, those persons are "authorities or officers"; for example, where the Act and Rules contemplate powers being given to District Magistrates, they are given to them as Officers. Some meaning must be given to the words, "or persons". I think therefore, though one is naturally tempted to construe such a rule as narrowly as possible, one must construe it so as to includ for example, the individual who is appointed "authorised controller" under the rule now in question, and it seems to me that in order to attack the validity of an act done of an authorised controller purporting to exercise his power of control, you have got to show that he in fact did not entertain the opinion that what he did did was reasonably necessary for the purposed

mentioned in rule 132, a task which may sound, and in many cases would be; - difficult, but would not be in any case beyond possibility.

There is one other section of general importance in the Act which requires to be mentioned, and that is section 1, subsect (4), which provides that the Act shall continue in force during th continuance of the present war and for a period of six months thereafter. There is, therefore, a very important distinction between the effect of Rule 75 and Rule 81. When the Act terminate it has been held by the Lahore High Court, and I respectfully agre with their conclusion, the Rules terminate and all things which ar being done only by virtue of a provision of the rules or some order made thereunder will have to cease, but transactions which have already been completed by virtue of or under the Rules are completed finally and for all pruposes, Where, therefore, under R 75 property has been requisitioned and then acquired it will not, when the happy day comes when the Act is no longer in existence, revert to its original owner. Where, however an undertaking has b placed under control under Rule 81, if the controller continues in and about the premises of the undertaking without the consent o the proprietor, he will unless he has some other justification for his presence - - be a trespasser and could legally be treated like any other trespasser. That being the position under the Act and Rules, I now turn to the order which the defendants made. Tha was in the following terms: It recited first of all, the election of the defendants to purchase the undertaking of the plaintiffs an that the plaintiffs had been required to sell the same and to hand over possession thereof. It recited the failure of the plaintiffs to comply with that order. It then recited that the determination of the price as provide in clause (b) of Section 5 of the Indian Electricity Act, 1910, and the completion of the purchase of the said undertaking would take time. Then comes the material recital:

> "Whereas it appears to the Government of Bombay that in the interests of the efficient prosecution of the war and for maintaining supplies and services essential to the life of the community it is necessary to exercise

control over the whole of the said undertaking, pending the completion of the purchase of the said undertaking" The operative part then follows, and it is in the following terms:

"Now , therefore, in exercise of the powers conferred by sub-rule (3) of rule 81 of the Defence of India Rules, the Government of Bombay is pleased:

(i)to authorise Mr. Nadamangalam Chakrapani Raghavan, Deputy Engineer, to exercise such effective control as to keep the said undertaking in efficient working order consistent with the provisions of the Indian Electricity Act, 1910, and;l

(ii)to prohibite the Hubli Electricity Company, Limited, Hubli, from interfering with or obstructing the said Mr. Nidamangalam Chakrapani Raghavan, Deputy Engineer, in the discharge of his functions under clause (i).

It is signed "by order of the Governor of Bombay " The signature, I think, is that of Mr. Hammer, Secretary to Govt.

The plaintiffs wanted me to say that the order is bad because it does not purport to be made by the Province of Bombay who are the defendants, nor it does not show on th face of it that it has been considered by His Excellency the Governor personally. In the last case, when a similar point was sought to be made, I did not think it was open to the plaintiffs to take that point on the pleadings. If I am wrong in that decision in the last case, it will equally follow that I am wrong in that decision in this case. Mr. Banaji asks me to say that this order clearly has been made other wise than in good faith, because it has in view a certain collateral purpose. It seeks to deprive the plaintiffs of their rights to keep possession of their plaint and premises ;ill they are paid off, and it very frankly recites that to omplete the purchase including the ascertaining of the rice, would take time.. This, to my mind, involves a fallacy. o doubt, it is true that the immediate purpose of making this rder as to prevent the effective exercise by the plaintiffs of

their unpaid vendors lien though it must be remembered that when the order was made. the plaintiffs has in terms denied the right of the defendants even to work the undertaking. What, I think, they should have said was, "We will not and we are not bound to, give you possession as you require, but we are prepared to permit you to enter on our premises as our licencees and there to work our undertaking". The actual practical difference between the two things might not be very great. But, as I said, the plaintiff had in fact denied the right of the defendants even to work the undertaking and had thereby brought about a state of things under which the whole of Hubli was in a state of darkness, apart from lighting by kerosene lamps. It may be perfectly true that that was the immediate purpose of the order, but it does not follow that, the immediate purpose not being the purpose provided for in the rule, the order was not made in good faith, and the burden is on the plaintiffs to prove thatthe order was made otherwise than in good faith. I will illustrate the difference between the immediate object on the one hand and the ultimate purpose of an order on the other. Supposing an Army Officer, being duly authorised to requisition, thinks of purchasing my car and mades an offer to buy it for say Rs.1,0000/-. I am not concerned with the purpose for which he requires the car nor is he under any duty to tell me that purpose. I accept his offer. He then says, "Give me the key of your garage and I will take your car away" My natural reply will be, "Nothing of the kind. I will give you the car after you have paid me Rs. 10,000 and not earlier". Supposing that being the position, he then says, "I will now take control of the car (as the defendants did here) or I will requisition your car". Does the fact that in the initial negotiations he did not mention the fact that he required the car for war purposes prove that he did not require the car for war purposes? I do not think it is so. If he requisitioned the car because I insisted on my lien, it might be that he wanted it for a collateral purpose and it might be that he wanted it for war purposes. If he wanted it merely to take his best girl out for pictures and nothing else, then ofcoursse, the requisition order would be made malafide. But if he really wanted the car for some purpose connected with the

efficient prosecution of the war, it makes no difference whether he exercised the power of requisitioning in order to make me sell the car, which I did not want to sell, or to make me waive the lien which I did not want to to waive. So here also I do not think that the fact that the defendant wanted the undertaking for a purpose connected with the efficient prosecution of the war had not been mentioned by the defendants upon the time that they proceeded to exercise emergency powers, shows that these emergency powers were exercised for some other purpose. Down to the "dark age" of the first three days and nights of May last, things has been going on as the Electricity Act contemplated they would. When the plaintiffs insisted on their right to retain possession till payment, an emergency had arisen which had to be dealt with somehow. I am not at all impressed with the argument, not very strongly pressed before me, but was raised in the affidavits at an earlier stage in this suit, that Hubli is, or was a year ago, so far away from the actual scene or hostilities in the present war that nobody could honestly contend that a supply of electric light was connected with the war or was a service essential to the life of the community. It seems to me that that involves quite a medaeval - view of modern warfare. If you were living a few centuries ago when war was a localised business transacted by comparatively small bodies of people in more or less close combat, it might be so; but when as at the present day, war is not only a physical but also an economic struggle, which affects every department of a nation's life the Government of a nation at war cannot afford to tolerate inefficiency in undertakings which contribute, however indirectly, th the economic life of its nation. It seems to me that the argument completely fails to take account of the all-embracing effects of a modern war. I am, therefore, not prepared to hold that this order was made in bad faith.

Given that it was not made in bad faith, section 16 of the Defence of India Act forbids me to call it in question. Before parting from this part of the case, I ought to refer to the decision which I have already mentioned once, of the Lahore Court, in the Lahore Electric Supply Company, Ltd. against the Province of Punjab reported in I.L.R.24 Lahore, 617. There the Lahore Government had purported to requisition. not to exercise control over, the plaintiff company's undertaking which was a going concern. Their licence, owing to the blunder of the Punjab Government in notgiving them notice in time of Government's decision to exercise a certain option to purchase it, being 2 years' notice - they in fact gave notice 24 hours too late - was in full force and effect; and secondly they were ready and willing to continue the supply of electricity for Lahore as they had done in the past. Leaving aside the complicated details of that case, there could be little doubt that the Government of Punjab were actually acting in bad faith in the worst sense of the phrase and their conduct after the proceedings started was little short of contempt of the Honourable Court. The present position is entirely different. The plaintiffs were in no real sense a "going" concern on the 3rd of May; as far as electricity operation were concerned they were a "gone" concern. Their licence had expired and they had no power to do anything in connection with their electricity operations. There was no need to exercise the powers given by section 75 first to requisition and then to acquir their undertaking, or perhaps I should say, their plant and other assets, for the very simple reason that legal process for th compulsory purchase of their plant and other assets was already in operation and in due course of time would have reached fruition. What was required was control, and it is interesting to notice, as the Lahore High Court pointed out - and I agree with it - that the machinery of section 75 is inapplicable to acquire a going concern as such. The proper method of bringing it under control is under the rule which has been utilised in the present case.

Now, I turn to the order itself and the one question which arises, which is whether that which has been done purporting to be in pursuance of this order is in fact within the scope of

the authority which it confers. What has been done, putting it very briefly, is to take possession of the whole of the premises occupied by the defendants for and in connection with their power house and the rest of their electrical undertaking, including the buildings, which I referred to at the outset of the judgment as not being in 1941 primarily used in connection with electrical operations. As I said before, in interpreting the word "control" m regard must be had to the nature of the thing to be controlled, and not only must regard be had to that, but regard must be had to the sort of control which the controller is directed to exercise. Mr. Raghavan here is directed to exercise such effective controlas "to keep the undertaking in efficient working order". Those words, fairly interpreted, seem to me to convey that he has to exercise such control as will keep the undertaking working, and working efficiently. Some meaning has to be given to the word "working" and to the word "efficient" and to their combined effect. and I do not think it would be enough if he merely exercised such control as to put the machines into order, capable of working, if he didnot also see that they were in fact worked. Quite obviously, the purpose of the order was to ensure the supply of electricity and not only to see that the machines, duly polished and oiled, were lying in the station and power house, doing nothing. It, therefore follows that he had to employ a staff, and he in fact employed the staff who had been employed by the plaintiffs, except their managerial staff. In doing that, it seems to me that he gave the plaintiffs nothing to grumble about, because thereby he relieved them of their obligation to pay those people, as they would otherwise had to do, for doing nothing. Secondly, it seems to me, that to exercise a high degree of control which he required to exercise, carried with it the right to determine what individual ought, and what individual ought not, enter and remain on the premises where the undertaking is carried on. The effect of that no doubt, in view of what he did, was to

ade the plaintiff company from possession, but I think it

was within his power as confirmed by that instrument, to say to any particular individual, including Mr. Amte, "You are not to come here". It is true Mr. Amte formerly had managerial functions, but in the events which had happened, Mr. Amte's company no longer carried on its electrical activities and Mr. Amte's managerial functions really no longer existed: there only remained the power to "manage" the company by doing some thing which the company could no longer do. Surely, Mr. Raghavan was entitled, in exersing the control which he was required to do, to decide who ought not be kept in the premises normally occupied by the employees of the company, either as part of their wages, or in connection with their services, whether or not those premises were primarily used for the purposes or producing electricity. Even if I was wrong in thinking that that he had power to do these things under this order as the person who was entitled to work the undertaking under the Electricity Act & supervising that work on behalf of Government he was entitled to do those things.

'There has been a lot of complaints of, for example taking possession of the plaintiffs' books & I -- am glad that arrangements are now made under which the books will be accesible when wanted by the Company -; there has been the complaint about turning Mr. Amte and his wife out of the premises they were living in, but whether or not that was within the powers of the order read with section 5(g) of the Eaectricity Act, one has also to observe that the turning of Mr. and Mrs. Amte out of their house does not give a right to the Company, but would at the most give Mr. and Mr. Amte a right/action of personally. In any case there is nothing to show so far that what Mr. Raghavan was doing was not something which he though reasonably necessary for the purpose of making his control ef effective." Given that he so thought - and it is not proved that he did not so think, all that has happened in this case since May is, in my opinion, protected by rule 132. I do not think this order is by any means so vague to be unenforcible. Its very short and wid- operative part makes it, to my mind, all the clearer what it means.

Last but not the least which has been urged in relation to the order is that if it means to confer a power to take possession and to carry on a business, regard must be had to section 299of the Government of India Act, under which a man's property is not be taken, by any legislation, ordinary or emergency, without paying compensation and , says Mr. Banaji, as rule 81 is not included in rule 96 which provides for compensation where property has been interfered with under certain specified rules, and rule 81 does not itself provide any means for assessing compensation, the rule must be bad as infringing section 299 of the Government of India Act. The answer to that will be found in section 19 of the Defence of India Act, where machinery is provided for compensation in cases underthe Act and Rules where any action is taken of thenature described in sub-section 2 of section 299 of the Government of India Act, 1935.

I should also point out a decision of late Mr. Justice Bennett in E.H.Jones (Machine Tools), Ltd. v. Farwell and Muirsmith, 1940 3 A.E.R., 608. There an attempt was made to do something very similar to that attempted in this case and not merely to take control of but also to carry on the existing business, which was a going concern on the date of the order. Mr. Justice Bennet's decision was that the rule under which was attempted was outside the powers conferred on the rule making authority by the English Act and the Indian Acts not being worded in precisely identical terms, it is not an authority which is necessarily a safe guide It is further observed that towards the end of his judgement Mr. Justice Bennett, having reached the conclusion which he had on the question whether the rule was intra vires, says that "as no other justification was put forward", the result, adverse to the nominees of the English convenant - must follow. Now, here the position is very different. There is another justification behind the action which Government has taken under its emergency powers. namely. its existing

non-emergency powers under the Electricity Act, and it seems to me that they are entitled to justify their action under either or both of those two things; and certainly their combined effect, when one takes into consideration Rule 132, is to justify what happened here. To that there is one exception. Mr. Raghavan has been in receipt of certain rents of property which, I suppose, was originally acquired by the company in the belief that it might require it for the electrical operations, and was let out because the company found that it did not want it for its electrical operations. It seems impossible to suppose that in taking the action he did in regard to this property, Mr. Raghavan could honestly have thought that he was exercising control of the electrical undertaking. I do not for a moment suggest that he did anything dishonestly, but he can not really have applied his mind to it. Mr. Maneckshaw, who appears for the defendants, does not really seek to justify the recovery of the rents by the defendants and has, on their behalf, expressed their willingness to account to the plaintiffs for all rents already collected. I think the orde which I should make is to declare that the defendants, their servants and agents (without prejudice to their right to occupy the staff quarters in and about the plaintiffs' power house for the purpose of accommodating the persons employed in working the plaintiffs' undertaking) are not entitled to recover rents from the renants of the plaintiffs or from any of them. No further order is made, as the defendants by their Counsel, undertake to account for the rents already collected. This is a very small matter, compared with the issues raised by the suit as a whole and indeed the relief granted is not a relief specifically asked for, and it is only covered by the prayer "further or other relief". I think if the defendants had really contested this point and the plaintiffs had fought and won it in a contest, I ought, probably, to apportion the costs in some way and allow the otherwise successful defendants less than the full costs of the suit. As the matter, however, is so small, I think the proper order to make is to give the defendants their costs of the suit.

194

.he following are the issues and the answers.-

thereto:

1. Was the order of 3rd May 1944 made

(a) in good faith?. Yes.

(b) for the purpose therein stated or for some other, and what purpose? For the purpose therein stated.

2. To what, if any, relief are the plaintiffs entitled? Declaration already set out, under "any further or other ~~xxi~~ relief".

Costs to be paid by the plaintiffs to the defendants.

Certified to be a true copy.

This 25th day May 1945.

For Prothonotary & Senior master.

CC.

High Court.

O. O. C. J.

Suit No.1385 of 1944.

The Hubli Electricity,
Company, Ltd) Plaintiffs.

V/S.

The Province of Bombay. Defendants.

Certified copy of,
Oral Judgment
Delivered by the Hon'ble Mr. Justice.
Blagden on 11th April 1945.

Applied on.
Ready on.
Stamps paid on.
Fls/.
Sec/ writer.
Exd/ by.

Messrs. Little & Co.
Solicitors to the Government of
Bombay & Attorneys for the defendant.

S. Exd. 6/45
24/4/45

ISSUES.

1. Is the Government of Bombay a necessary party to the suit ?
2. Is the suit barred by section 17 of the Defence of India Act ?
3. Is the suit bad for want of notice under Sec. 80 of the C.P.C.?
4. Is the jurisdiction of this Court barred by Sec.32 of the Bombay Civil Court's Act ?
5. Is the present suit for an injunction, without a prayer for possession, maintainable?
6. Does Plff. prove that he is a lessee of the four buildings in question from Deft. No. 2 ?
7. Does he also prove that the machinery and other articles in the buildings belongs to him ?
8. Does Deft. No. 1 prove that the Plff. Company is a fictitious undertaking started by Deft. No. 2 to defeat the intention of Government to take charge of the Hubli Electric Undertaking ?
9. If so, is Plff. entitled to the injunction sought ?
10. If not, is the lease to Plff. (if proved) of the four buildings void as being in voilation of the purposes for which the land was originally acquired.? Is it void as being contrary to the terms and conditions of such acquisition ?
11. Is the lease void under Sec. 9 (2) of the Electricity Act ?
12. Would these pleas be a good defence for the present suit ?
13. Did the Deft. No. 1 act in his personal capacity when he took possession of the buildings and obstructed the Plff.'s people from entering these buildings ?
14. If not, was it necessary for Deft. No. 1 to act so, for due discharge of his obligations imposed by Government's Order, Ex.32 ?
15. Is the suit property valued for purposes of Court fees and jurisdiction ?
16. Is Plff. entitled to the injunction and declaration sought ?
17. What Order ?

No more sought.

NOTE: Issue Nos. 1 to 5 and No. 15 to be tried as Preliminary Issues.

Sd/- N.S.Bhopali.

(C.J. Jr.Dn.)

25-11-1947.